

EXHIBIT D-1

Plaintiff's Amended Complaint

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BARBARA J. WINGARD, individually	:	
and as Administratrix of the Estate of	:	Civil Action No.: 2:12-cv-01500
TROY ROBERT LEE HOOFTALLEN,	:	
Plaintiff,	:	District Judge Cathy Bisson
	:	
v.	:	CIVIL ACTION - LAW
	:	
	:	JURY TRIAL DEMANDED
GUY A. BATTESTILLI;	:	
STEVEN E. JOHNSON;	:	
PENNSYLVANIA STATE POLICE;	:	
COMMONWEALTH OF PA;	:	
TASER® INTERNATIONAL, INC.;	:	
Defendants	:	

COMPLAINT

AND NOW comes Plaintiff, Barbara J. Wingard, individually and as the Administratrix of the Estate of Troy Robert Lee Hooftallen, by and through her undersigned counsel, and the law firm of Boyle Litigation, and avers as follows:

INTRODUCTION

This case involves 36 year old Troy Robert Lee Hooftallen who died at the hands of two Pennsylvania State Police troopers during a medical emergency. Mr. Hooftallen was forced into a prone position, handcuffed, shackled, shocked repeatedly by a Taser, and asphyxiated, by having a knee pressed into his throat and his chest compressed.

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983.
2. Jurisdiction is founded upon 28 U.S.C. § § 1331 and 1343(1), (3), and (4).
3. Venue is proper in this Court, as all parties are located within the Western District of Pennsylvania, and the cause of action arose in the Western District of Pennsylvania.

PARTIES

4. Plaintiff is Barbara J. Wingard, is an adult individual living in Punxsutawney, Jefferson County, Pennsylvania. Ms. Wingard is the natural parent of Mr. Hooftallen, and the Administratrix of the Estate of Troy Robert Lee Hooftallen.

5. Defendant, Guy A. Battestilli, is an adult individual, who during all relevant times, was employed by the Pennsylvania State Police, as a trooper. Defendant Battestilli was stationed at the Punxsutawney Barracks, which is located at 485 North Findley Street, Punxsutawney, Pennsylvania 15767. All of Defendant Battestilli's actions or inactions were taken under color of state law. He is sued in his individual capacity.

6. Defendant, Steven E. Johnson, is an adult individual, who during all relevant times, was employed by the Pennsylvania State Police, as a trooper. Defendant Johnson was stationed at the Punxsutawney Barracks, which is located at 485 North Findley Street, Punxsutawney, Pennsylvania 15767. All of Defendant Johnson's actions or inactions were taken under color of state law. He is sued in his individual capacity.

7. Defendant Pennsylvania State Police ("PSP") was created by an act of legislation, which was signed into law on May 2, 1905. Defendant PSP has jurisdiction in all political subdivisions in the Commonwealth. Defendant PSP is headquartered at 1800 Elmerton Avenue, Harrisburg, PA 17110.

8. Defendant Commonwealth of Pennsylvania created Defendant PSP by an act of legislation, which was signed into law on May 2, 1905.

9. Defendant, Taser® International, Inc. (hereinafter "Taser® International"), is a Delaware Corporation and licensed to do business in the Commonwealth of Pennsylvania. Taser® International's corporate office is located at 17800 North 85th Street, Scottsdale, Arizona 85255. Taser® International is the manufacturer of an electrical control device ("ECD") commonly referred to as a Taser, which is used for the neuromuscular incapacitation of individuals.

IDENTIFICATION OF JOHN DOE DEFENDANTS

10. On October 17, 2012, Plaintiff filed a Complaint, pursuant to 42 U.S.C. § 1983, seeking damages.

11. Prior to filing her Complaint, in response to an inquiry from Plaintiff's lawyer, Defendant PSP refused to identify the John Doe Defendants.

12. On November 13, 2012, undersigned counsel sent a written request to Chief Counsel for Defendant PSP, Scott R. Ford, advising him of the filed Complaint and requesting documents necessary to identify the John Doe Defendants.

13. On the same date, despite the fact that no attorney had entered their appearance and Attorney Ford is chief counsel for the agency, Attorney Ford advised undersigned counsel that his office is not the proper office for service of discovery requests and denied the request.

14. On the same date, undersigned counsel forwarded the same request for documents to the Commonwealth of Pennsylvania, Office of Attorney General, who Attorney Ford advised would eventually be representing Defendant PSP.

15. On November 16, 2012, counsel for Defendants Commonwealth of PA and PSP entered his appearance.

16. On January 15, 2013, undersigned counsel forwarded the request to the head of the Civil Division for the Commonwealth of Pennsylvania, Office of Attorney General

17. On January 23, 2013, undersigned counsel received PSP investigation report IAD 2010-0738 and identified the John Doe Defendants.

FACTUAL BACKGROUND

18. On October 18, 2010, Troy Hooftallen was at the home of his girlfriend, which is located on Charley Hill Lane, Gaskill Township, Jefferson County, PA 15767.

19. Mr. Hooftallen was suffering from depression and complications related to ulcerative colitis and other bowel disorders.

20. One of the medications that he was taking was Mucinex DM.

21. Mucinex DM contains two powerful medications: guaifenesin and dextromethorphan.

22. Mucinex DM can cause serious and dangerous side effects that require immediate medical attention.

23. These side effects include difficulty breathing, severe dizziness, hives, anxiety, confusion, and hallucinations.

24. At around 11:20 PM, Mr. Hooftallen's girlfriend found him to be confused and disoriented.

25. Mr. Hooftallen's girlfriend and family members decided that he required emergency medical treatment.

26. A family member called 911 and advised the dispatcher that Mr. Hooftallen required emergency medical treatment because he was apparently experiencing a bad reaction to Mucinex DM.

27. 911 dispatched the state police and an ambulance.

28. About 15 minutes after the 911 call, Defendants Battestilli and Johnson arrived but the ambulance did not.

29. Defendants Battestilli and Johnson were advised that Mr. Hooftallen was kind of "messed up" from the Mucinex that he takes for his Crohn's Disease.

30. The family member advised Defendants Battestilli and Johnson that Mr. Hooftallen was not violent but that he did not want to go to the hospital.

31. The family member further advised Defendants Battestilli and Johnson that Mr. Hooftallen had tried to commit suicide a few weeks earlier.

32. Despite the fact that the Individual Defendants were never presented with the threat of serious injury or death, Defendants Battestilli and Johnson used

deadly force against Mr. Hooftallen in the form of Taser strikes and the application of knee or other pressure to his neck, throat and back.

33. Specifically, when Defendants Battestilli and Johnson entered the home, they located a confused and anxious Mr. Hooftallen sitting on a sofa smoking a cigarette and talking to his mother.

34. Defendants Battestilli and Johnson teased and taunted Mr. Hooftallen until he finally took a swing at one of the troopers.

35. In response, Defendants Battestilli and Johnson tackled Mr. Hooftallen onto a sofa pressing his face into the cushions.

36. During the course of being tackled, Mr. Hooftallen's forehead struck a counter hard.

37. Mr. Hooftallen was Tasered in "probe mode" in the upper back, near his heart, by Defendant Battestilli, with a model X26 TASER that had been manufactured by Defendant Taser® International and issued to Defendant Battestilli by Defendant PSP.

38. Shortly after the struggle began, Mr. Hooftallen found himself on the floor, with either Defendants Battestilli's or Johnson's left knee on his neck and throat and right knee in the middle of his back between his shoulder blades, and either Defendants Battestilli or Johnson pressing on his back.

39. At that point in time, Mr. Hooftallen surrendered to the custody of the officers stating, “Ok, ok, I’m done – I’m done.”

40. Defendants Battestilli and/or Johnson handcuffed Mr. Hooftallen.

41. Either Defendants Battestilli or Johnson, however, continued to kneel on Mr. Hooftallen’s throat and back.

42. After being handcuffed and before shackles were applied to Mr. Hooftallen’s ankles, Defendant Battestilli, with Defendant Johnson watching and having sufficient time to intervene to stop him, Tasered Mr. Hooftallen at least three more times in “drive stun” mode.

43. At that point, Mr. Hooftallen became still and quiet.

44. During the incident, Mr. Hooftallen was Tasered in “probe mode” and “drive-stun mode” at least four times, possibly more.

45. Specifically, Defendant PSP’s records indicate that Defendant Battestilli Tasered Mr. Hooftallen as follows: (1) 11:45:45 PM by a probe shot for seven seconds in the upper back, (2) 11:47:12 PM by drive stun for four seconds in the right leg, (3) 11:47:19 PM by drive stun for six seconds in the right side waist area, and (4) 11:47:26 PM by drive stun for five seconds in the right side waist area.

46. Defendants Battestilli and Johnson dragged Mr. Hooftallen into the middle of the floor, where he remained handcuffed, shackled, and on his stomach.

47. Once again, either Defendants Battestilli or Johnson placed his left knee on Mr. Hooftallen's neck and throat, cutting off his airway supply, and his right knee on his back.

48. Defendants Battestilli or Johnson then acknowledged that Mr. Hooftallen was unconscious.

49. One of the family members present inquired as to why Defendants Battestilli or Johnson had to keep his knees on Mr. Hooftallen's neck, throat, and back.

50. Defendants Battestilli or Johnson replied that when he regained consciousness, he would start resisting again.

51. A family member asked Defendants Battestilli or Johnson to check Mr. Hooftallen's breathing, and it was discovered that he was in respiratory and cardiac arrest.

52. Defendants Battestilli or Johnson called again for an ambulance, and then for approximately 10 minutes, Defendants Battestilli or Johnson stood around and waited for the ambulance to arrive.

53. While waiting for medical personnel to arrive, Defendants Battestilli or Johnson did not remove the handcuffs or shackles from Mr. Hooftallen, initiate CPR, or provide him with any other medical treatment.

54. When medical personnel arrived, they found Mr. Hooftallen handcuffed, shackled, and lying on the floor in respiratory and cardiac arrest.

55. The medical personnel requested that Defendants Battestilli or Johnson remove the handcuffs and shackles and only then were they removed.

56. Medical personnel initiated CPR and transported Mr. Hooftallen to the hospital.

57. Upon arrival at the hospital, it was determined by doctors that Mr. Hooftallen was brain dead.

58. On October 19, 2010, Mr. Hooftallen was pronounced dead.

59. After an autopsy was performed, the Allegheny County Medical Examiner concluded that Mr. Hooftallen “died as a result of Atherosclerotic Cardiovascular Disease while being both physically and electrically (TASER) restrained during a physical confrontation with the Pennsylvania State Police. Positional asphyxia may have also played a role in his demise given witness accounts of the police officers pinning him to the ground in a prone position with their body weight on top of his upper back/neck and thighs. The acute intoxication of both Dextromethorphan and Guaifenesin (both found in Mucinex DM) played a role in his demise likely causing his acute state of agitation.”

60. Defendant Taser® International is engaged in the business of

manufacturing, distributing and selling electrical control devices (“ECDs”) to law enforcement agencies throughout the United States and Canada, as well as replacement cartridges for the continuing use of said products.

61. In connection with the original sale, and to promote and encourage ongoing sales, Defendant Taser® International makes representations regarding the potential risks and medical safety of its ECDs, including the model X26 TASER, and provides training and training materials for law enforcement agencies to use in instructing their officers in the purported safe use of its products.

62. Defendant Taser® International sold ECDs, including the model X26 TASER in question, and replacement cartridges, to Defendant PSP, and has provided training materials to Defendant PSP from the date of the original sale until the present day, in connection with those sales.

63. Defendant Taser® International knows that law enforcement agencies such as the Defendant PSP do not independently research medical risks posed by ECDs like the model X26 TASER but instead rely on medical, training, and safety information provided by Defendant Taser® International.

64. When Defendant Taser® International introduced its products like the model X26 TASER into the market in 1999, Defendant Taser® International represented that its products did not affect heart rhythms in humans.

65. In 2006 to 2007, Defendant Taser® International became aware that its products like the model X26 TASER could cause ventricular arrhythmias, including potentially lethal ventricular fibrillation in humans.

66. Defendant Taser® International, however, waited until September of 2009, before it even began to acknowledge the potential of its products to affect heart rhythms.

67. Up and until the date of the incident in question, Defendant Taser® International's training programs and literature failed to fully and properly incorporate or communicate the available medical studies regarding the dangers of their products.

68. To the contrary, Defendant Taser® International continued to represent to law enforcement and the public that its products were and are a less than lethal weapon.

69. Defendant Taser® International knows that the model X26 TASER causes stress on the body, which can result in physical injury or death.

70. The model X26 TASER is designed to shut off after a preprogrammed amount of time.

71. Despite knowing the substantial risks in doing so, Defendant Taser® International designed the model X26 TASER so that the preprogrammed amount of cycle time can easily be overridden by the user (which occurred in this incident).

72. Defendant Taser® International continues to ignore the related dangers of designing its products like the model X26 TASER to permit the user to override the preset cycle time while knowing that its products are being regularly misused in the field by law enforcement personnel.

73. Defendant Taser® International's model X26 TASER is no less lethal than a gun – if it is fired into the chest it can kill – if it is fired into the foot it does not kill.

COUNT I

Plaintiff v. Defendants Battestilli and Johnson Fourth Amendment – Excessive Force Pursuant to 42 U.S.C. § 1983

74. Paragraphs 1- 73 are stated herein by reference.

75. Pursuant to the Fourth Amendment of the U.S. Constitution, police officers enjoy a privilege to use objectively reasonable force to effect a lawful arrest.

76. Despite the fact that Defendants Battestilli and Johnson were not presented with the threat of serious injury or death, they provoked the need to use force, and in fact used deadly force, against Mr. Hooftallen in the form of Taser strikes and the application of knee and other pressure to his neck, throat, and back.

77. The force used by Defendants Battestilli and Johnson to effect the arrest of Mr. Hooftallen was excessive and therefore unlawful.

78. The unlawful force used against Mr. Hooftallen was for the purpose of inflicting pain and physical injury, torture, and punishment.

79. As a direct and proximate cause of the Defendants' actions, Mr. Hooftallen suffered immense physical pain, humiliation, fear, physical injuries, and death.

COUNT II

Plaintiff v. Defendants Battestilli and Johnson Fourteenth Amendment – Denial of Medical Care Pursuant to 42 U.S.C. § 1983

80. Paragraphs 1-79 are stated herein by reference.

81. Mr. Hooftallen was a pretrial detainee in the custody of Defendants Battestilli and Johnson.

82. While a pretrial detainee, the aforementioned Defendants knew of but ignored Mr. Hooftallen's serious medical needs associated with his respiratory and cardiac arrest.

83. A medical need is serious when it is "so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987), *cert. denied*, 486 U.S. 1006 (1988).

84. It was obvious to Defendants Battestilli and Johnson that Mr. Hooftallen required emergency medical treatment because they called a second time for an ambulance.

85. Despite knowing that Mr. Hooftallen was in respiratory and cardiac arrest, Defendants Battestilli and Johnson failed to initiate CPR.

86. Defendants Battestilli and Johnson refused to initiate CPR for a

non-medical reason.

87. As a direct and proximate cause of the Defendants' actions, Mr. Hooftallen suffered immense physical pain, humiliation, fear, physical injuries, and death.

COUNT III

Plaintiff v. Defendants Commonwealth of PA and PSP Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973

88. Paragraphs 1- 87 are stated herein by reference.

89. Defendants PSP and Commonwealth of Pennsylvania violated Mr. Hooftallen's right to be free from discrimination on the basis of his disability pursuant to Title II of the ADA and § 504 of the RA.

90. Specifically, Defendant PSP and Commonwealth of Pennsylvania failed to properly train troopers to have peaceful encounters with mentally and physically disabled persons, and failed to establish a proper policy for handling such encounters, which resulted in the discrimination against Mr. Hooftallen that caused him to suffer his injuries and death.

91. Title II of the ADA provides, in relevant part, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities by a

public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

92. Similarly, pursuant to § 504 of the RA, “[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency[.] 29 U.S.C. § 794.

93. In order to state a claim under either statute, a Plaintiff must prove that he (1) is disabled, (2) is otherwise qualified for the services, programs or activities sought or would be qualified if the defendant had made reasonable modifications to the services, programs or activities, and (3) was discriminated against solely on the basis of his disability. *See Wagner v. Fair Acres Geriatric Ctr.*, 49 F.3d 1002, 1009 (3d Cir.1995).

94. Defendant PSP is a public entity that receives federal funding.

95. Mr. Hooftallen suffered from qualifying disabilities of depression, ulcerative colitis, and other bowel disorders.

96. Moreover, Defendants Battestilli and Johnson who were employed by Defendant PSP and Commonwealth of Pennsylvania, and who interacted with Mr.

Hooftallen, regarded him as being disabled.

97. Mr. Hooftallen was entitled to the same law enforcement services that Defendant PSP provides to other non disabled persons.

98. Specifically, Mr. Hooftallen was entitled to the benefit of a lawful exercise of police powers, including the right not to be subjected to an unlawful use of force and the right to emergency medical care.

99. Defendants PSP and Commonwealth of Pennsylvania discriminated against the Mr. Hooftallen solely because of his disabilities.

100. As a direct and proximate cause of the Defendants' actions, Mr. Hooftallen suffered immense physical pain, humiliation, fear, physical injuries, and death.

COUNT IV

Plaintiff v. Taser® International, Inc. Strict Products Liability

101. Paragraphs 1- 100 are stated herein by reference.

102. To state a products liability cause of action under section 402A of the Restatement (Second) of Torts in Pennsylvania, a Plaintiff must prove two things: “(1) that the product was defective; and (2) that the defect was a substantial factor in causing the injury.” *Hadar v. AVCO Corp.*, 886 A.2d 225, 228 (Pa. Super. Ct. 2005) (citing *Webb v. Zern*, 220 A.2d 853 (1966)).

103. Defendant Taser® International had an ongoing duty to use reasonable and ordinary care in providing truthful and up-to-date medical, training, and safety information in connection with the ongoing use of its products by various law enforcement agencies.

104. Defendant Taser® International had a duty to manufacture safe products, which included the duty to design its products, like the model X26 TASER, so that the cycle settings could not be easily overridden by the user.

105. Defendant Taser® International had a duty to stop selling its products or to manufacture safer products after it discovered that its products were being used improperly by law enforcement.

106. Defendant Taser® International had a further duty to provide sufficient warnings and instructions as were required to inform its user and consumers of the possible risks and inherent limitations of his product.

107. Defendant Taser® International's failure to provide sufficient warnings and instructions, resulted in its products being defective.

108. Defendant Taser® International failed to correct the known misconception that their products are less than lethal.

109. As a direct and proximate result of the foregoing malicious, wanton, reckless, and negligent conduct, Defendants Battestilli and Johnson were not properly trained:

- a. To only use ECDs when deadly force would be lawful;
- b. On the proper locations on the human body to use ECDs.
- c. On the dangers associated with extending the duration of the pulsing electrical current beyond the pre-programmed setting.
- d. To recognize cardiac arrest or to properly respond to a cardiac arrest event.

110. As a direct and proximate cause of the Defendants' actions, Mr. Hooftallen suffered immense physical pain, humiliation, fear, physical injuries, and death.

111. Defendant Taser® International's conduct was motivated by a desire to increase profits with a complete disregard for the value of human life.

112. Accordingly, Plaintiffs seek punitive damages in the maximum amount allowed by law.

COUNT V

Plaintiff v. Defendants Wrongful Death

113. Paragraphs 1- 112 are stated herein by reference.

114. Defendants Battestilli and Johnson caused the death of Mr. Hooftallen by shocking him repeatedly with a Taser, and by placing a knee on his neck and throat and other pressure on his back causing him to asphyxiate.

115. As a direct and proximate cause of the Defendants' actions, Mr. Hooftallen suffered immense physical pain, humiliation, fear, physical injuries, and death.

116. There were no actions brought by decedent on this cause of action in his lifetime, and none have been brought after his death apart from the present action.

117. Mr. Hooftallen died intestate and had no spouse or children.

118. The following persons are entitled to recover damages: Barbara J. Wingard (mother), 421 Seitz Lane, Box 149, Punxsutawney, PA 15767, and Perry Hooftallen (father), 3 Railroad Avenue, Roulette, PA 16746.

119. Plaintiff brings this action on behalf of Mr. Hooftallen's survivors and claims damages for pecuniary loss suffered by decedent's survivors by reason of his wrongful death, as well as for reimbursement for medical bills, funeral and burial expenses, administrative expenses, and other expenses incident to his death, as well as the loss of services and financial care that he would have provided to his survivors.

COUNT VI

Plaintiff v. Defendants Survival Action

120. Paragraphs 1- 119 are stated herein by reference.

121. Plaintiff claims on behalf of Mr. Hooftallen's Estate damages for the pain and suffering caused during the events in question until the time of his death.

WHEREFORE, the Plaintiff respectfully requests that judgment be entered in her favor as follows:

- A. That this Court declare that the Defendants' actions violated his constitutional and statutory rights;
- B. Compensatory damages;
- C. Punitive damages (except against Defendants PSP and Commonwealth of Pennsylvania);
- D. Reasonable attorney's fees and costs;
- E. A jury trial; and,
- F. Such other financial or equitable relief as is reasonable and just.

RESPECTFULLY SUBMITTED,

BOYLE LITIGATION

Dennis E. Boyle, Esquire

PA Supreme Court I.D. No. 49618

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s/Devon M. Jacob

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Dated: February 11, 2013

Counsel for Plaintiff

EXHIBIT D-2

Deposition of Barbara Wingard

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - - - -

BARBARA J. WINGARD,)
individually and as)
Administratrix of the)
Estate of TROY ROBERT)
LEE HOOFTALLEN,)

Plaintiff,)

vs.)

Civil Action
No. 2:12-cv-01500

GUY A. BATTESTILLI;)
STEVEN E. JOHNSON;)
PENNSYLVANIA STATE)
POLICE; COMMONWEALTH)
OF PENNSYLVANIA; TASER)
INTERNATIONAL, INC.,)

Defendants.)

- - - - -

DEPOSITION OF BARBARA JEAN WINGARD

- - - - -

December 5, 2013

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AGENCY

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DEPOSITION OF BARBARA JEAN WINGARD,
the Plaintiff herein, called by the Defendant,
TASER International, Inc., for examination,
taken pursuant to Rule 30 of the Federal
Rules of Civil Procedure, by and before
Lina G. Hershberger, a Professional Court
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, at the Office of
the Attorney General, Sixth Floor, Manor
Complex, 564 Forbes Avenue, Pittsburgh,
Pennsylvania, on Thursday, December 5, 2013, at
9:39 a.m.

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COUNSEL PRESENT:

For the Plaintiff:

Travis S. Weber, Esq.
Boyle Litigation
4660 Trindle Road, Suite 102
Camp Hill, PA 17011

For the Defendant TASER International, Inc.:

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1
2 For the Defendants Pennsylvania State Police
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I N D E X

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WITNESS: BARBARA J. WINGARD

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BY MR. DONAHOE 185

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P R O C E E D I N G S

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BARBARA JEAN WINGARD,

the Plaintiff herein, having been first duly
sworn, was examined and testified as follows:

- - - - -

EXAMINATION

BY MR. FIELDS:

Q. Good morning. Please state your
full legal name for the record, ma'am.

A. Barbara Jean Wingard.

Q. Can you spell Jean, please?

A. J-E-A-N.

Q. Have you ever gone by any other
name?

A. I was married, and it was Barbara
Jean Hooftallen.

Q. How long were you married?

A. Almost 20 years.

Q. What was your former husband's name?

A. Perry Hooftallen.

Q. Is that the only time you have been
married?

A. Yes.

1 B. Wingard - by Mr. Fields

2 Q. Is Perry Hooftallen still alive or
3 is he deceased now?

4 A. He's alive.

5 Q. Do you know where he resides?

6 A. Yeah. In Roulette, Pennsylvania.

7 Q. When was the last time you spoke
8 with Perry Hooftallen?

9 A. It's been just a couple weeks.

10 Q. Let me back up a little bit. Have
11 you ever been deposed before?

12 A. I don't understand the question.

13 Q. Have you ever had your deposition
14 taken before?

15 A. No.

16 Q. Have you ever testified in court?

17 A. Yes.

18 Q. When did you do that?

19 A. Back in 2002. And I might have had
20 a deposition done then, but it was nothing like
21 this. They were typing it and stuff, but that
22 was it.

23 Q. What did your testimony relate to
24 back in 2002?

25 A. I had a work-related injury.

1 B. Wingard - by Mr. Fields

2 Q. Was it a workers' compensation
3 hearing?

4 A. Yes.

5 Q. Are you currently receiving workers'
6 compensation?

7 A. No.

8 Q. Have you ever received any workers'
9 compensation?

10 A. Yes.

11 Q. I'm sure your attorney has talked to
12 you a little bit about the process, but let me
13 just cover what I like to call the ground rules
14 for a deposition so that you and I understand
15 each other so there's no confusion and so that
16 we make it easier on Lina.

17 We're here today just as if we're in
18 open court. You're giving sworn testimony, and
19 you have taken an oath to tell the truth under
20 penalty of perjury. Do you understand that?

21 A. Yes.

22 Q. Because the setting is a little more
23 informal, it sometimes gets easy to be
24 conversational or to talk over each other in a
25 way that we probably wouldn't do if we were in

1 B. Wingard - by Mr. Fields

2 court. Does that make sense?

3 A. Yes.

4 Q. So to try to avoid that, I just ask
5 that we both try to keep a few things in mind.
6 Probably one of the most important things is
7 that I'm not always the most articulate in how
8 I ask my questions. So if I ask you something
9 and you don't understand what you're being
10 asked, I want you to let me know. Is that fair?

11 A. Yes.

12 Q. But if I ask you a question and you
13 answer it, I'm going to assume that you
14 understood what you were asked. Is that fair?

15 A. Yes.

16 Q. So far you're doing a fantastic job
17 of the next rule which is, again, because we
18 have a court reporter taking everything down,
19 you need to answer orally as opposed to
20 nonverbally with nods of the head.

21 A. Right.

22 Q. And you're doing a great job so far.
23 It's important we not talk over each other, and
24 I'm sure some of the other attorneys will jump
25 in and let us know if we are doing that, or

1 B. Wingard - by Mr. Fields

2 Lina will.

3 How are you feeling this morning?

4 A. Okay.

5 Q. Is there any reason that you can't,
6 as we sit here this morning, recall facts and
7 testify truthfully as to what you remember?

8 A. No.

9 Q. Are you under the influence of any
10 intoxicating drugs or alcohol?

11 A. No.

12 Q. I forgot the most important rule.
13 This is not an endurance contest. If you want
14 to take a break at any point in time, just let
15 me know.

16 A. Okay.

17 Q. The only thing I ask is that if
18 there's a question pending from one of the
19 attorneys, that you answer that question before
20 we break. Is that fair?

21 A. Yes.

22 Q. Then occasionally one of the
23 attorneys may have an objection to another
24 attorney's question. Generally the way that
25 plays out is the objecting attorney will just

1 B. Wingard - by Mr. Fields
2 say "form," F-O-R-M. So it's a little
3 disconcerting. You might hear somebody say
4 "form" after a question, and they are just
5 preserving their evidentiary objection for down
6 the road with the Judge. Does that make sense?

7 A. Yes.

8 Q. We talked a little bit about your
9 prior testimony in the workers' comp case.
10 Let's start with your current employment. Are
11 you currently employed?

12 A. No.

13 Q. When was the last time you were
14 employed?

15 A. 2002.

16 Q. Where were you working at the time?

17 A. Mercy Hospital in Scranton,
18 Pennsylvania.

19 Q. How long did you work for Mercy
20 Hospital?

21 A. Probably about nine years.

22 Q. So approximately 1994 to 2002, '93
23 to 2002?

24 A. No. I started there in 1995, I
25 think it was. So maybe it was seven years.

1 B. Wingard - by Mr. Fields

2 I'm not sure.

3 Q. We don't need to go into a whole lot
4 of detail, but can you just walk me through the
5 position or positions that you held while you
6 were with Mercy, starting with the first
7 position held?

8 A. I only had one. It was in
9 environmental services. I was in housekeeping.

10 Q. Did you feel that you injured
11 yourself on the job?

12 A. Yes.

13 Q. Just a thumbnail sketch of what that
14 incident involved.

15 A. Okay. We were shorthanded that day,
16 and I was doing a different area than what I
17 usually do. I went into an office, and it had
18 a really large garbage can. It looked like it
19 had just regular papers in it. I was hurrying,
20 and I just pulled it out real quick, and I felt
21 two, like, pains in my shoulders.

22 Q. Then you filed a workers' comp claim
23 after that?

24 A. Yes. I tried working, but I
25 couldn't.

1 B. Wingard - by Mr. Fields

2 Q. Was the workers' comp claim denied
3 by the workers' comp insurer or was it approved?

4 A. It was approved.

5 Q. Did you start receiving workers'
6 compensation at some point?

7 A. Yes.

8 Q. For how long did you receive
9 workers' compensation or are you still
10 receiving it?

11 A. No. I'm not receiving it. It was
12 probably about 2010.

13 Q. Do you currently consider yourself
14 retired?

15 A. Yes. I'm on Social Security
16 Disability.

17 Q. When did you start I'll call it SSDI
18 for short?

19 A. I was approved for 2002, but I
20 didn't start receiving it probably until 2010,
21 whenever I went off of the workers' comp.

22 Q. Ma'am, starting with high school,
23 would you just give me a thumbnail sketch of
24 your educational experience.

25 A. Right. I went from 1st grade to

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B. Wingard - by Mr. Fields

11th, moved to Scranton, and then I received my GED.

Q. What year did you receive your GED?

A. 1997 I'm thinking.

Q. Do you have any what I'll call post-high school education or training?

A. Well, I went to the University of Marywood for the GED, and I also went to computer classes.

Q. Did you receive any type of degree or certificate?

A. No.

Q. Any medical training?

A. No.

Q. All right. Prior to your work with Mercy in 1995, where were you employed?

A. I wasn't. I was married.

Q. Did you have any full-time employment prior to 1995 starting let's go from age 20 forward? I'm not interested in any high school jobs.

A. Right. I was employed at a small factory in Austin, Pennsylvania.

Q. What years did you work there?

1 B. Wingard - by Mr. Fields

2 A. Probably 1992 to '94 probably, or
3 '91. Something like that.

4 Q. What did you do for that factory?

5 A. I was in janitorial.

6 Q. Any other jobs during your adult
7 life other than the one for Mercy and the one
8 for that factory?

9 A. No.

10 Q. What was the name of that factory?

11 A. Emporium Specialties.

12 Q. Where do you currently reside?

13 A. 211 Park Avenue, Punxsutawney,
14 Pennsylvania.

15 Q. How long have you been living at
16 that address?

17 A. Probably about nine months.

18 Q. Does anybody live there with you?

19 A. Yes. My grandson.

20 Q. What is your grandson's name?

21 A. Matthew Eric Hooftallen.

22 Q. How old is Matthew?

23 A. He just turned 13.

24 Q. I'm going to jump ahead a little
25 bit. Did Matthew Hooftallen spend some time

1 B. Wingard - by Mr. Fields
2 with your son, Troy Hooftallen, on the day of
3 the incident that gives rise to this case?

4 A. Yes. I think he did. Yeah, I'm
5 sure that he did.

6 Q. Where did you reside prior to the
7 211 Park Avenue address?

8 A. I forgot the number, but it was on
9 Seitz Street. It was 421 Seitz Street.

10 Q. Spell Seitz, please.

11 A. S-E-I-T-Z. It was the -- Seitz is
12 the name of the guy who owned the whole farm.
13 It was in Punxsutawney too, but it was like in
14 a rural area outside of town.

15 Q. How long did you live at that
16 address?

17 A. About three years.

18 Q. I'm going to refer to "the incident"
19 during this deposition. By "the incident," I
20 mean the incident involving Troy Hooftallen and
21 the Pennsylvania State Police that gives rise
22 to this incident. Do you understand that?

23 A. Yes.

24 Q. So you'll understand when I say "the
25 incident," you will know what I'm referring to?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. With respect to your son, Troy
4 Hooftallen, are you comfortable with me calling
5 him Troy?

6 A. Yes.

7 Q. Ordinarily I would call him
8 Mr. Hooftallen, but there were a few
9 Mr. Hooftallens we'll be talking about.

10 A. Right.

11 Q. I mean no disrespect by that.

12 A. Right.

13 Q. So you were at the 421 Seitz Street
14 address -- I'm sorry -- you were residing there
15 back at the time of the incident; correct?

16 A. Yes.

17 Q. Was anybody residing there with you?

18 A. Yes.

19 Q. Who?

20 A. My son, Tim; and Matthew.

21 Q. Who is Matthew's father?

22 A. Tim.

23 Q. Does Matthew have any siblings?

24 A. Yes, he does. He has a half-brother
25 and half-sister.

1 B. Wingard - by Mr. Fields

2 Q. What are their names?

3 A. Christopher Enslin, E-N-S-L-I-N; and
4 Ashley Jenkins, J-E-N-K-I-N-S.

5 Q. Do they live with their mother?

6 A. Yes.

7 Q. Have they ever lived with you?

8 A. No.

9 Q. Do you know if they were present at
10 any point in time on the day of the incident?

11 A. No. They don't even live near here.

12 Q. Where was Troy residing, if you
13 know, on the date of the incident?

14 A. 27 Charley Hill Lane.

15 Q. Is that Kim Hall's house?

16 A. Yes.

17 Q. Do you know if she owns that house
18 or does she rent it?

19 A. No. She was renting it.

20 Q. That's Charley Hill Lane?

21 A. Yes.

22 Q. How far is that from your property
23 on Seitz Street?

24 A. Probably from here to the university
25 right there (indicating). Well, sort of. It

1 B. Wingard - by Mr. Fields

2 was, like, two yards away. I'm not good at
3 estimating the exact feet.

4 MR. DONAHOE: You know that's
5 Duquesne anyway.

6 THE WITNESS: Yes. I seen the
7 sign down there.

8 Q. So within walking distance. Is that
9 fair?

10 A. Yes.

11 Q. Do you know how long Troy lived at
12 the Charley Hill Lane address prior to the
13 incident?

14 A. He lived there a year longer than I
15 did, so a year before the incident.

16 Q. Had you moved into the Seitz Street
17 address fairly shortly before the incident?

18 A. Yes. It was the same year.

19 Q. Was there any reason that you chose
20 to move there at that time?

21 A. Yeah. I wanted to just live closer
22 to Troy.

23 Q. Were you concerned about Troy at
24 that time?

25 A. No.

1 B. Wingard - by Mr. Fields

2 Q. Had Troy attempted suicide prior to
3 you moving to that address or did that occur
4 after?

5 A. No. That occurred after.

6 Q. Where did you reside prior to the
7 Seitz Street address?

8 A. 1609 Sprinkle Mills Road, and that
9 was in Punxsutawney too.

10 Q. How long did you live there, ma'am?

11 A. About three years.

12 Q. Did Troy ever live with you at that
13 address?

14 A. No.

15 Q. When was the last time that you and
16 Troy had lived together prior to the incident?

17 A. Approximately 1995-'96. Those
18 two years.

19 Q. My math isn't great, but that would
20 be around the time he was maybe 18 to 20 years
21 old; is that correct?

22 A. Oh, do you know what? I'm saying 19.
23 I'm sorry. It's 20. I'm sorry.

24 Q. So you two were living together back
25 around 2005?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. And then he moved out; correct?

4 A. Yes.

5 Q. Would that put him at about 30 years
6 old?

7 A. Yeah.

8 Q. Had he lived with you the entire
9 time up until then?

10 A. Yes.

11 Q. Then why did he move out in 2005?

12 A. I moved from Scranton to here. He
13 stayed back in Scranton.

14 Q. When you say "here," do you mean
15 Punxsutawney?

16 A. Yes.

17 Q. But prior to him moving out in 2005,
18 he continued to live with you; correct?

19 A. Yes.

20 Q. And did he pay rent at any point in
21 time?

22 A. Yes.

23 Q. All right. When did he start paying
24 rent? Do you recall?

25 A. Yeah. The whole time he was living

1 B. Wingard - by Mr. Fields

2 with me, for two years anyway.

3 Q. Let me back up a little bit.

4 Starting with high school, can you walk me
5 through Troy's educational background.

6 A. Sure. He graduated high school from
7 1993. He went to Williamsport College, but
8 then he quit. So he really didn't even stay
9 there very long, maybe a semester. Then he
10 moved back to Austin, PA, where he lived all of
11 his life up until he moved to Scranton.

12 Q. Austin, PA, is that A-U-S-T-I-N?

13 A. Yes.

14 Q. Did he graduate high school in
15 four years?

16 A. Yes.

17 Q. So was he about approximately 18
18 when he graduated?

19 A. Yes.

20 Q. Then did he ever tell you why he
21 quit Williamsport College?

22 A. Well, he didn't really say the exact
23 words, but I knew he just missed his friends
24 and his family.

25 Q. Okay. So he never told you that,

1 B. Wingard - by Mr. Fields

2 but that was your speculation; correct?

3 A. Yes.

4 Q. Would you agree with me, though,
5 because you didn't talk with him about it, you
6 have no personal knowledge as to why he quit?
7 Would you agree with that?

8 A. Yeah. I guess you could say that.

9 Q. The reason I ask that is as
10 attorneys, it's important for us to know when
11 you're testifying about personal knowledge --

12 A. Yes.

13 Q. -- as opposed to when you might be
14 speculating or guessing about something.

15 A. Right.

16 Q. Do you understand that?

17 A. Yes.

18 Q. So I periodically may ask you
19 whether you're testifying to personal
20 knowledge, and, if so, what the basis is for
21 that or whether you're speculating.

22 A. Okay.

23 Q. So do you have any personal
24 knowledge as to why Troy quit Williamsport
25 College?

1 B. Wingard - by Mr. Fields

2 A. Well, can I say the same thing? He
3 just -- whenever he would come home, he didn't
4 want to go back, so I knew it was because he
5 missed home.

6 Q. Did you ever talk to him about it?

7 A. Yes.

8 Q. What did he say?

9 A. Well, I told him that he should
10 continue, and he said, okay, Mom, I'll try, and
11 then he would go back.

12 Q. Did he ever personally tell you why
13 he didn't want to go back?

14 A. He just didn't like it he said.

15 Q. Do you know how his grades were
16 while he was there?

17 A. No, I don't.

18 Q. How were his grades in high school?

19 A. Really good.

20 Q. What's your definition of really good?

21 A. He had mostly Bs. Sometimes a
22 couple As and some Cs, but mostly Bs.

23 Q. Do you know where he was in his
24 class rank at graduation?

25 A. Val -- whatever that word is.

1 B. Wingard - by Mr. Fields

2 Q. Valedictorian?

3 A. Yes.

4 Q. So he graduated top of his class?

5 A. Yes.

6 MR. DONAHOE: Let me
7 interrupt. Did you say he was the class
8 valedictorian?

9 THE WITNESS: Yes.

10 Q. Were you proud of him?

11 A. Yes.

12 Q. During high school, did he ever
13 receive any other honors or awards that you
14 recall?

15 A. In sports he did. He played
16 baseball every year. He played basketball
17 every year.

18 Q. Other than high school and his time
19 at Williamsport College, did he have any other
20 post-high school, meaning after high school,
21 education or training?

22 A. No, he didn't.

23 Q. Do you recall where he was living in
24 Austin before he moved back to Punxsutawney?

25 A. Yes.

1 B. Wingard - by Mr. Fields

2 Q. Where was he living?

3 A. Scovell Street, but I don't know the
4 number.

5 Q. Would you please spell that.

6 A. S-C-O-V-E-L-L.

7 Q. Do you know how long he was living
8 at that Scovell Street address?

9 A. Probably a year.

10 Q. What year was that?

11 A. Probably 1994 to 1995.

12 Q. Then from '95 to 2005 he moved back
13 in with you?

14 A. Yes. Down in Scranton.

15 Q. All right. From '95 to 2005, where
16 did the two of you live?

17 A. 1609 Sanderson Avenue, Scranton, PA.
18 And we did move once from there.

19 Q. Where did you move to?

20 A. 647 Monroe Avenue, Scranton.

21 Q. Approximately what years did you
22 live at the 1609 Sanderson Avenue address?

23 A. 1995 to 1996. And then Monroe?

24 Q. Yes, ma'am.

25 A. Monroe was 1996 to 2005.

1 B. Wingard - by Mr. Fields

2 Q. During the time that you two lived
3 together, did you ever have to call 911 for any
4 reason?

5 A. Never.

6 Q. Were the police ever called to your
7 house when Troy lived with you?

8 A. Never.

9 Q. Do you recall the police ever
10 visiting the house with questions about Troy or
11 his activities?

12 A. One time.

13 Q. When was that?

14 A. Whenever we lived at Sanderson
15 Avenue. They came for Troy because he was
16 supposed to turn in his license, but he had to
17 tell them he never had a license. I guess they
18 just didn't get the information or something.

19 Q. Do you know why they were asking for
20 him to turn in his license?

21 A. He had one charge on him back in
22 Austin, and it was underage drinking.

23 Q. Do you know, did he have a trial for
24 that underage drinking charge? Did he plead
25 guilty? Was it dismissed?

1 B. Wingard - by Mr. Fields

2 A. Yes. He pled guilty.

3 Q. Did he serve any kind of time in a
4 correctional facility?

5 A. No. He just had to do community
6 service.

7 Q. Are you aware of any other charges
8 that Troy ever had brought against him during
9 his lifetime?

10 A. Yeah. Back whenever he was young,
11 him and a few kids broke into some camps up
12 there. That was right around the same time
13 that he was underage drinking.

14 Q. I'm sorry. I'm getting myself a
15 little bit confused. Was that Austin?

16 A. Yes. He was still in school.

17 Q. Any other interactions with law
18 enforcement for any reason? Good, bad?

19 A. None.

20 Q. All right. It's 2005, and then you
21 moved to Punxsutawney; correct?

22 A. Yes.

23 Q. Between 2005 and 2010, if you could
24 just run me through, to some degree I think we
25 have done this, but run me through where Troy

1 B. Wingard - by Mr. Fields

2 resided.

3 A. He lived in Scranton from 2005 to
4 2006.

5 Q. Where did he live, ma'am?

6 A. 647 Monroe Avenue, Scranton.

7 Q. Then from 2006?

8 A. He moved to 24 or 26 Charley Hill
9 Lane.

10 Q. How long did he live there?

11 A. Up until his death.

12 Q. In 2010?

13 A. Uh-huh.

14 Q. Did he and Kim Hall live together
15 that entire time from 2006 to 2010?

16 A. Yes.

17 Q. Did he ever come the night and stay
18 at your house during those years?

19 A. No.

20 Q. From 2005 until 2010, did he ever
21 contribute to your rent?

22 A. What's the dates again now?

23 Q. After he moved out in 2005 through
24 2010. Once he moved out.

25 A. No.

1 B. Wingard - by Mr. Fields

2 Q. He never contributed to your rent?

3 A. Not to my rent, no.

4 Q. Did he ever provide you with any
5 money for any reason?

6 A. Well, if I needed some, I would
7 borrow some off of him.

8 Q. But would you pay him back?

9 A. Yes.

10 Q. Did you ever help him financially
11 from 2005 to 2010?

12 A. Yes.

13 Q. Describe that for me, please.

14 A. It was after he got sick with the
15 Crohn's disease, and he couldn't work, and if
16 he needed money for cigarettes or I helped him
17 with his rent.

18 Q. Do you recall approximately when he
19 got sick with Crohn's disease?

20 A. I'm thinking it was approximately
21 2008.

22 Q. Was that around the time he lost his
23 job?

24 A. Yes. That was the time.

25 Q. Do you know whether -- was he

1 B. Wingard - by Mr. Fields
2 terminated from that job or did he quit that job?

3 A. No. He quit that job.

4 Q. How do you know that, ma'am?

5 A. Because he told me that he quit. He
6 was too embarrassed because he had accidents
7 there trying to get to the bathroom in time.

8 Q. Where was he working at that time?

9 A. It's called Stello's, and it's a
10 warehouse that makes spaghetti sauce and
11 different things like that. He was a packer.

12 Q. Do you know how long he worked
13 there?

14 A. I'm going to say approximately
15 two years.

16 MR. DONAHOE: What town was
17 that in again, Stello's?

18 THE WITNESS: Punxsutawney.

19 MR. DONAHOE: Sorry.

20 Q. Now, I do want to talk about his
21 employment history, but let me go back to the
22 financial support you were providing him from
23 you said it was 2008 to the time of his death;
24 is that correct?

25 A. Yes.

1 B. Wingard - by Mr. Fields

2 Q. You testified that you would
3 occasionally help him with his rent; is that
4 correct?

5 A. Yes.

6 Q. You would occasionally give him some
7 money to buy cigarettes; is that correct?

8 A. Yes.

9 Q. Did you ever give him money for any
10 other reasons?

11 A. Mickey D's. That's about it.

12 Q. Occasionally you gave him money for
13 food?

14 A. Yes.

15 Q. Was he struggling financially after
16 he quit his job with Stello's in 2008?

17 A. Yes, he was.

18 Q. Was he receiving any kind of
19 benefits from any type of source?

20 A. No.

21 Q. Did he hold any other jobs full time
22 or part time between the time that he quit
23 Stello's and the date of his death?

24 A. No.

25 Q. Did he have any source of income

1 B. Wingard - by Mr. Fields

2 during those years?

3 A. No. The household income was Kim's,
4 though. She was able to keep it mostly caught
5 up, but Troy just wasn't able to provide to her.

6 Q. Do you know if he was looking for
7 work during those years?

8 A. No. He wasn't looking.

9 Q. Do you know if he applied for any
10 kind of disability or unemployment?

11 A. He applied for assistance, welfare
12 assistance, to get the medical card.

13 Q. Did he receive that?

14 A. Yes.

15 Q. Is that the ACCESS program?

16 A. Yes.

17 Q. So any money that Troy had between
18 2008 and the time of his death either would
19 have been from you or from Kim or from a family
20 member or friend; is that correct?

21 A. Correct.

22 Q. Do you know if anybody else was
23 helping him financially during those years?

24 A. Probably my mother --

25 Q. What's her name?

1 B. Wingard - by Mr. Fields

2 A. -- his grandmother. Veronica May,
3 M-A-Y.

4 Q. Is Ms. May still alive?

5 A. Yes.

6 Q. Where does she live?

7 A. Home, PA.

8 Q. How close to that -- you have to
9 forgive me. I'm from Arizona. Is that near
10 Punxsutawney?

11 A. It's probably about maybe a half
12 hour away.

13 Q. Do you know if she saw or spoke to
14 Troy in the 48 hours before the incident?

15 A. No, she didn't.

16 Q. In terms of Troy's cigarette habit,
17 do you know how long he had been smoking or
18 when he started smoking?

19 A. Probably in high school.

20 Q. Then was he a smoker when he started
21 in high school until the time of his death?

22 A. Yes.

23 Q. At the time of his death, do you
24 know approximately how much he smoked on
25 average? Either by the day or week, whatever

1 B. Wingard - by Mr. Fields

2 is easiest for you to kind of estimate.

3 A. Okay. Maybe -- can I go by packs of
4 cigarettes?

5 Q. Yes, ma'am.

6 A. Okay. He would probably buy a pack
7 of cigarettes every three days.

8 Q. So he had about a third-a-pack-a-day
9 habit?

10 A. Right.

11 Q. What type of cigarettes did he smoke?

12 A. Marlboro filters.

13 Q. Let's go back to Troy's employment
14 history. Was he employed prior to his position
15 with Stello's?

16 A. Not here in Punxsutawney.

17 Q. Do you know where he was employed?

18 A. In Scranton.

19 Q. Do you know where he worked in
20 Scranton?

21 A. Yes.

22 Q. Where, ma'am?

23 A. Price Chopper, and it's a grocery
24 chain, and it was on Monroe Avenue.

25 Q. Do you know how long he worked

1 B. Wingard - by Mr. Fields

2 there?

3 A. About ten years.

4 Q. Then did he hold that job right up
5 until he took the position with Stello's? Do
6 you know?

7 A. Just about -- I think there was a
8 lapse between it whenever he was moving and
9 getting settled in here to Punxsutawney.

10 Q. Do you know whether he quit the
11 position with Price Chopper or was he
12 terminated from that position?

13 A. He quit.

14 Q. How do you know that, ma'am?

15 A. He told me.

16 Q. Do you know whether he was a good
17 employee, a bad employee?

18 A. He was very good. He was an
19 assistant manager. He never missed work. I
20 don't think he missed even one day. And he
21 liked his job.

22 Q. So he held that position maybe
23 around 1995 to 2005, 2006?

24 A. Yes.

25 Q. Did he hold any jobs, any full-time

1 B. Wingard - by Mr. Fields

2 adult jobs, prior to that?

3 A. Yes.

4 Q. Where, ma'am?

5 A. Tafts. It was just the
6 abbreviation, T-A-F-T-S. I don't know what it
7 stands for. It's something about floor
8 cleaning, and that's what he did.

9 Q. Do you know where that business is
10 located?

11 A. It's not there anymore. They just
12 went out of business. But it was in Scranton.

13 Q. Do you know how long he worked
14 there?

15 A. Probably about six months. Right
16 whenever we moved to Scranton.

17 Q. Any other adult full-time employment
18 positions?

19 A. No.

20 Q. Do you know if at any time in Troy's
21 life he was ever fired from a job?

22 A. No.

23 Q. Other than speaking with your
24 attorneys, did you do anything to prepare for
25 today's deposition?

1 B. Wingard - by Mr. Fields

2 A. No.

3 Q. Did you review any documents before
4 you came here today?

5 A. Just glanced over one. That was so
6 quick, and it was, like, the first page.

7 Q. What was that, ma'am?

8 A. My Affidavit I think it's called.

9 Q. A statement that you prepared that
10 you had notarized; correct?

11 A. Yes. But I didn't even look at the
12 rest of it, just the beginning.

13 Q. Prior to glancing at the first page,
14 when was the last time you had looked at that
15 document?

16 A. Probably 2012 I'm assuming.

17 Q. Did you talk with anybody about your
18 deposition other than your attorneys?

19 A. No.

20 Q. Did you have any meetings with your
21 attorneys about this case at any point in time
22 where there was anybody else present? A family
23 member or a friend?

24 A. No.

25 Q. Have you ever met with, for

1 B. Wingard - by Mr. Fields
2 instance, your attorneys with Kim Hall present?
3 A. No.
4 Q. How about with Tim present?
5 A. Yes.
6 Q. On how many occasions?
7 A. That I met with my attorneys?
8 Q. When Tim was present.
9 A. Once.
10 Q. When approximately was that?
11 A. 2010.
12 Q. Which attorneys did you meet with at
13 that time?
14 A. Dennis Boyle.
15 Q. What did you all talk about, ma'am?
16 MR. WEBER: Objection. We're
17 not going to get into discussions with
18 attorneys and what she was saying.
19 MR. FIELDS: Tim is not a
20 party to the action, and so my position would
21 be that by having him present, there is no
22 attorney-client privilege.
23 MR. WEBER: Well, I'm going to
24 object to any conversation that took place when
25 Dennis and her spoke, regardless of when Tim

1 B. Wingard - by Mr. Fields
2 was present and they were going to be speaking
3 about privileged matters.

4 MR. FIELDS: Let me just
5 clarify the question, and then you can make
6 your objection.

7 BY MR. FIELDS:

8 Q. When you met with Mr. Boyle when Tim
9 was present, ma'am, I'm interested in knowing
10 what was discussed. I don't want to know
11 anything about any conversations where your
12 son, Tim Hooftallen, was not present.

13 MR. FIELDS: Do you want to
14 make an objection?

15 MR. WEBER: I'm going to
16 object. I mean, regardless of whether he's
17 present, there's privileged information that I
18 don't want her talking about when they are with
19 Attorney Dennis. If we want to take this up
20 with the Court, that's fine, but I'm not going
21 to have her answer anything about what she
22 discussed with Dennis while Tim was present.

23 MR. FIELDS: So I just want to
24 make sure the record is clear, are you
25 instructing her not to answer that question on

1 B. Wingard - by Mr. Fields
2 grounds of privilege?

3 MR. WEBER: Can you restate
4 the question again so I can hear it?

5 MR. FIELDS: Sure.

6 BY MR. FIELDS:

7 Q. Ma'am, what was discussed during the
8 meeting with you, your attorney, and Tim
9 Hooftallen?

10 MR. WEBER: Yes. I'm going to
11 object to that.

12 MR. DONAHOE: Let me just say
13 on the record that there's really no
14 attorney-client privilege if a nonparty is
15 present. When the attorney is talking to
16 another person, it's waived. I don't think it
17 could be clearer.

18 MR. WEBER: Perhaps we can
19 have her answer what was discussed between her
20 and Tim. I don't want her answering what
21 Dennis may have told her about the case at all
22 during that time.

23 MR. FIELDS: I think our point
24 is, I don't want to speak for Mr. Donahoe, but
25 if Tim Hooftallen was present, there's no

1 B. Wingard - by Mr. Fields
2 privilege because he's a nonparty. So what I
3 need to know for the record is --

4 I'm not waiving any right. In fact,
5 what I want to do is preserve my right to go to
6 the Court and to get an order to redepose
7 Ms. Wingard about any conversations she has had
8 where there's a nonparty present. We are
9 entitled to that.

10 So I just need to know if you're
11 instructing her not to answer that question,
12 and then I'll make it clear for the record that
13 I'm not waiving my right to go out and do
14 that -- to go ahead and do that.

15 MR. WEBER: So you're trying
16 to get at what was discussed with her, Dennis,
17 and Tim present?

18 MR. FIELDS: Correct.

19 MR. WEBER: You can answer that.

20 BY MR. FIELDS:

21 Q. Ma'am, tell us everything you recall
22 discussing during that meeting with Mr. Boyle,
23 only during the time that Tim Hooftallen was
24 present.

25 A. He asked me questions about what

1 B. Wingard - by Mr. Fields
2 happened with Troy, who all was there. I
3 explained, you know, what I seen; Tim explained
4 what he seen; and then he said he would be in
5 touch. That's about it.

6 Q. Did Tim provide him with any
7 documents or information, written information,
8 at that time?

9 A. No. Not at that time.

10 Q. Do you remember specifically what
11 Tim told Mr. Boyle that he had seen?

12 A. Yes, I remember.

13 Q. Tell me everything you recall about
14 that.

15 A. Tim said that he's the one that
16 called 911. He didn't ask for the police. He
17 just wanted an ambulance. I didn't know he was
18 making the call. I was inside with Troy, and
19 Troy agreed to go to the ER with me. We just
20 sat there talking and waiting for Tim to come
21 in.

22 But to get back to Dennis. He
23 explained that, what happened and what he seen,
24 and that was about it. Dennis said he would be
25 in touch with me.

1 B. Wingard - by Mr. Fields

2 Q. Did you have any other meetings with
3 Mr. Boyle or anybody from his office where
4 there was a nonattorney present?

5 A. Yes.

6 Q. How many?

7 A. Two.

8 Q. All right. Those two other
9 meetings, let's talk about the first one. Who
10 was there?

11 A. David Crill I think his name is.

12 Q. Do you know how to spell Crill?

13 A. C-R-I-L-L I think his name is.

14 Q. Who is David Crill?

15 A. He's a private investigator.

16 MR. DONAHOE: I don't know if
17 there's a privilege for that one or not.

18 MR. WEBER: I wasn't going to
19 say anything yet, but Dave Crill is our
20 investigator. I was going to object to
21 anything that was discussed when he was present
22 which would be aimed towards advising her on
23 legal rights and preparing the case.

24 BY MR. FIELDS:

25 Q. And then the second meeting, who was

1 B. Wingard - by Mr. Fields

2 present?

3 A. Dave, me, Kim Hall, and I don't
4 recall if Tim was there or not.

5 Q. But you do remember Kim was there?

6 A. Yes.

7 Q. When did that meeting occur?

8 A. 2010.

9 Q. Was that meeting with when you say
10 Dave, is that David Crill?

11 A. Yes.

12 Q. Were any attorneys present at that
13 meeting?

14 A. No.

15 Q. What did you all discuss at that
16 meeting?

17 A. What Kim observed during the
18 incident.

19 Q. Did she provide any kind of written
20 statement or any kind of documents to David at
21 that time?

22 A. I don't recall.

23 Q. Tell me everything you remember her
24 telling David during that meeting.

25 A. You mean during the whole incident,

1 B. Wingard - by Mr. Fields

2 what happened during the incident? That's all
3 she --

4 Q. No. Let me rephrase. Tell me
5 everything that you remember Kim telling, that
6 you specifically remember Kim telling, David
7 during that meeting.

8 A. Well, she was telling him where --
9 because we was at Kim's house, and she was
10 explaining where the incident took place and
11 her view of the incident.

12 Q. Do you know if that conversation was
13 recorded?

14 A. I don't recall, but I think she did
15 an affidavit. I'm almost positive.

16 Q. Do you know whether anybody, though,
17 was recording or typing up that conversation or
18 interview that took place during the meeting?

19 A. No.

20 Q. You don't know, or it wasn't?

21 A. There wasn't any.

22 Q. No one was taking notes?

23 A. Just Dave.

24 Q. So David was taking notes
25 contemporaneous with Kim telling him what she

1 B. Wingard - by Mr. Fields

2 remembered?

3 A. Yes.

4 Q. I think you already said that you
5 don't recall her bringing any documents and
6 giving those to him at the time?

7 A. Not at the time. I don't recall
8 anything like that.

9 Q. Did you ever remember Kim gathering
10 up any documents or materials and providing
11 them to you or your attorneys?

12 A. She gave us her statement.

13 Q. Is that it?

14 A. Yes. She had to have it documented --
15 I mean, notarized.

16 Q. Ma'am, I'm going to mark this is as
17 Defense Exhibit 1.

18 (Defense Exhibit No. 1 was
19 marked for identification.)

20 (Discussion held off the
21 record.)

22 Q. Ma'am, I'm going to hand you what's
23 been marked as Defense Exhibit 1. Do you
24 recognize that document?

25 A. Yes, I do.

1 B. Wingard - by Mr. Fields

2 Q. Have you seen that before?

3 A. Yes.

4 Q. Would you please identify it for the
5 record.

6 A. Civil action lawsuit.

7 Q. Is that your Complaint in this
8 lawsuit?

9 A. Yes.

10 Q. Have you ever read that document?

11 A. Yes, I have.

12 Q. Do you agree with everything that's
13 stated in that document?

14 A. Well, I don't recall the whole
15 document, but I'm assuming I did or else I
16 would have said something to my attorney.

17 Q. Do you recall whether you reviewed
18 that document prior to this lawsuit actually
19 getting filed?

20 A. Yes.

21 Q. And you gave it your blessing at
22 that time?

23 A. Yes.

24 Q. Was Troy ever married?

25 A. No.

1 B. Wingard - by Mr. Fields

2 Q. Did Troy ever have any children?

3 A. No.

4 Q. How many children have you had
5 during your life, ma'am?

6 A. Three.

7 Q. And what's the name and date of
8 birth for your first child?

9 A. Terry Eugene Hooftallen.

10 Q. What's his date of birth?

11 A. 11/11/72.

12 Q. Is Terry still alive?

13 A. Yes.

14 Q. And where does he live?

15 A. Austin, Pennsylvania.

16 Q. And he's married and has kids?

17 A. Yes.

18 Q. Do you know if he or his wife or any
19 of his children spoke with Troy in the 48 hours
20 before the incident?

21 A. No, he didn't.

22 Q. None of them did, to your knowledge?

23 A. None.

24 Q. Who was your second child?

25 A. Troy.

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B. Wingard - by Mr. Fields

Q. What was Troy's date of birth?

A. 7/6/74.

Q. Then who was your third child, ma'am?

A. Tim Eric Hooftallen.

Q. What was Tim's date of birth?

A. December 8, 1976.

Q. He passed away on September 2 -- I'm
sorry. Ma'am, when did he pass away?

A. February 1, 2013.

Q. I'll tell you, ma'am, I'm sorry for
your loss.

A. Thank you.

Q. Troy's father, Perry Hooftallen,
remind me what year you divorced.

A. 1995 is on the -- yeah, 1995.

Q. Do you know if Troy maintained a
relationship with him after that?

A. Troy did not.

Q. Do you know why?

A. Troy did not like his father.

Q. Do you know why Troy didn't like his
father?

A. His father didn't treat him very good.

Q. Did his father abuse him?

1 B. Wingard - by Mr. Fields

2 A. Probably verbally.

3 Q. So after the divorce, Troy and Perry
4 no longer maintained a relationship?

5 A. Never talked even once.

6 Q. All the way up until the time of --

7 A. His death.

8 Q. -- Troy's death?

9 A. Uh-huh.

10 Q. You mentioned you spoke with Perry a
11 few weeks back?

12 A. Yes. He wanted me to keep him
13 updated on the case, and he wanted to know
14 since it was canceled once coming down here, to
15 know when I was coming down.

16 Q. Do you know if he's seeking any
17 damages for this case?

18 A. Well, since he's my ex-husband then,
19 from what I was told, he would get half if
20 there was any kind of damages paid out or
21 anything.

22 Q. Does that seem fair to you?

23 A. No. Because him and Troy was not
24 friends at all. They did not speak. It wasn't --
25 well, Perry could have tried to talk to Troy.

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B. Wingard - by Mr. Fields

He never talked to any of them after the divorce.

Q. So Perry Hooftallen and Troy don't have a relationship from 1995 through the date of his death in 2010?

A. Right.

Q. But now Perry Hooftallen is seeking half of whatever damages, if any, coming from this lawsuit?

A. Right.

Q. Perry in fact has told you I want half of whatever comes out of this?

A. No. He didn't tell me that.

Q. I don't want you to tell me anything your lawyers told you.

A. That's what I was going to say.

Q. Have you talked to Perry about this lawsuit?

A. A little bit, not a lot. Because I think he calls the office quite a bit.

Q. When you decided to file a lawsuit, did you contact Perry at that time?

A. No.

Q. Did you have any communication with Perry between '95 and 2010?

1 B. Wingard - by Mr. Fields

2 A. No.

3 Q. So once that divorce took place, you
4 and Troy both were, for all intents and
5 purposes, pretty much done with Perry?

6 A. Right.

7 Q. Then the incident occurs in 2010?

8 A. Right.

9 Q. At some point after that, you happen
10 to have occasion to start communicating with
11 Perry again; correct?

12 A. Correct.

13 Q. Is that because of this lawsuit?

14 A. No. It's because of Troy's death.

15 Q. Okay. Did you two, when you started
16 talking again because of the death, did you
17 become friends again or is it just more for
18 purposes of the funeral and the lawsuit?

19 A. Yes.

20 Q. From the time of Troy's death until
21 the present, how often do you speak with Perry?

22 A. Could be once a month, could be once
23 every three or four months. It's not on a
24 regular basis.

25 Q. After you got past Troy's funeral

1 B. Wingard - by Mr. Fields

2 and all those arrangements were over with, have
3 all the conversations or communications been
4 just in terms of this lawsuit or have you been
5 talking for any other reason?

6 A. Yeah. We talk for different reasons.

7 Q. But do you keep him updated on the
8 lawsuit?

9 A. Somewhat. Not on a regular basis,
10 though.

11 Q. Anyone in your family ever die of a
12 sudden cardiac arrest or heart attack?

13 A. Well, Tim's death certificate, it
14 says that he had cardiac arrest, sudden cardiac
15 arrest.

16 Q. Ma'am, I do want to talk a little
17 bit about Tim's death. And one of the things
18 that I forgot to mention this morning is I
19 understand that this is a difficult experience
20 for you, and so it's not my intent to be
21 insensitive. In fact, it's my intent to treat
22 you with respect and to be sensitive to that.
23 So as we go forward, if you want to take a
24 break, just let me know. But there's going to
25 be some things I'm going to want to ask you

1 B. Wingard - by Mr. Fields

2 about. I just wanted to let you know that.

3 A. Okay.

4 Q. Anyone other than Tim on your side
5 of the family ever die of a heart attack or
6 sudden cardiac arrest?

7 A. No. Not that I recall.

8 Q. Anybody ever have any heart
9 conditions ranging from something as common as
10 high blood pressure or high cholesterol all the
11 way through a bypass or pacemaker?

12 A. Right, yes.

13 Q. Who, ma'am?

14 A. Well, I have high blood pressure.

15 Q. Do you know if Troy had high blood
16 pressure?

17 A. No, he didn't.

18 Q. Anyone else on your side of the
19 family that you know of?

20 A. Yes. My mother, Veronica May.

21 Q. What does she have?

22 A. She had some blockage, and she had a
23 stent put in.

24 Q. Anyone else on your side, ma'am?

25 A. No. Not that I recall.

1 B. Wingard - by Mr. Fields

2 Q. Do you know if anybody on Troy's
3 father's side of the family has ever had any
4 heart issues of any kind?

5 A. Yes.

6 Q. Who, ma'am?

7 A. Perry's brother, Chuck. Charles.

8 Q. That would be Troy's uncle?

9 A. Yes.

10 Q. What conditions did Chuck have?

11 A. I don't know.

12 Q. Do you know if he passed away from a
13 heart condition?

14 A. No. He's still alive.

15 Q. What do you know generally just
16 about his --

17 A. I think he had a bypass done.

18 Q. Anybody else on Troy's father's side
19 of the family either had a heart attack, a
20 sudden cardiac arrest, or any other kind of
21 heart condition?

22 A. No. Not that I know of.

23 Q. Terry, your eldest son, has he ever
24 had any cardiac conditions?

25 A. No.

1 B. Wingard - by Mr. Fields

2 MR. FIELDS: I'm going to mark
3 as Defense Exhibit 2 a photograph.

4 (Defense Exhibit No. 2 was
5 marked for identification.)

6 Q. Ma'am, do you recognize that
7 photograph?

8 A. Yes, I do.

9 Q. On the left side there's a gentleman
10 in a white tank top. Do you see that?

11 A. Uh-huh.

12 Q. Can you identify that individual for
13 the record?

14 A. That's my eldest son, Terry
15 Hooftallen.

16 Q. In the middle of the picture,
17 there's a gentleman with I believe a hat and a
18 black shirt. Would you identify that
19 individual, please?

20 A. That's my youngest son, Tim.

21 Q. And then on the right side of the
22 picture, there's a gentleman with a hat and a
23 gray sleeveless shirt. Would you identify that
24 individual, please?

25 A. That's my son, Troy Robert Lee

1 B. Wingard - by Mr. Fields

2 Hooftallen.

3 Q. Thank you, ma'am. Ma'am, have you
4 ever been charged with a crime?

5 A. No.

6 Q. Going back to high school -- I'm
7 doing a little housekeeping here as I go back
8 through my notes. Going back to Troy's time in
9 high school, did he have any behavioral issues?

10 A. Any what?

11 Q. Any behavioral issues while at high
12 school.

13 A. No. None.

14 Q. Do you know if Troy was ever a party
15 to a civil lawsuit? And by civil lawsuit, I
16 mean not criminal charges, but one that
17 involves money damages.

18 A. No.

19 Q. In the couple, let's say the two years
20 leading up to Troy's death, do you know, was he
21 physically active at all?

22 A. Yes.

23 Q. How so?

24 A. Well, he would be outside playing
25 baseball with Matthew. When Matthew was

1 B. Wingard - by Mr. Fields

2 smaller, he would pick him up, swing him around
3 by his arm and ankle; pushed him on the swings.
4 He played softball himself on a softball team.
5 And going down to where he lived at, we had --
6 they had basketball hoops and stuff there, and
7 he enjoyed going down there and doing that.

8 Q. So in the couple of years leading up
9 to his death, he played softball and he played
10 basketball and he would play with his nephew.

11 A. Uh-huh.

12 Q. Did he have a gym membership?

13 A. No.

14 Q. Do you know, was he a jogger? Would
15 he go out and jog in the mornings or the
16 afternoons?

17 A. No. He usually lifted weights.

18 Q. Where did he lift weights?

19 A. Where?

20 Q. Yes, ma'am.

21 A. In the basement. Or do you mean the
22 residence?

23 Q. There's gyms, there's friends who
24 sometimes have weights; so --

25 A. I see. Yeah, it was at home.

1 B. Wingard - by Mr. Fields

2 Q. So he had some weights at home that
3 he lifted?

4 A. Yes.

5 Q. Did he ever complain to you -- and
6 let's frame this with the five years leading up
7 to his death, other than the colitis, did he
8 ever complain to you about any physical
9 conditions or problems?

10 A. No, no.

11 Q. Did he ever complain to you about
12 any chest pains?

13 A. No.

14 Q. If there's a medical record where
15 he's complaining about chest pains during
16 exertion, that's nothing that he ever mentioned
17 to you?

18 A. No.

19 Q. So the only physical complaint he
20 had about his health or his physical well-being
21 in the five years before his death was the
22 colitis?

23 A. Yes.

24 Q. When did that start? I know in 2008
25 he quit his job because of it.

1 B. Wingard - by Mr. Fields

2 A. Right.

3 Q. But did it start before that, or is
4 that about the time it started?

5 A. A little before that because he
6 tried working.

7 Q. So maybe around 2007 all of a sudden
8 he starts having these stomach problems?

9 A. Uh-huh.

10 Q. Now, have you seen the autopsy
11 report from Troy?

12 A. Yes.

13 Q. Are you aware that he had severe
14 heart disease?

15 A. Yes.

16 Q. Is that the first that you ever came
17 to learn of that?

18 A. Yes.

19 Q. Are you aware that the medical
20 examiner attributes his death to severe heart
21 disease?

22 A. Yes.

23 Q. Do you have any reason to disagree
24 with the medical examiner?

25 A. No.

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B. Wingard - by Mr. Fields

Q. Now, I got in some what we call
discovery responses. We sent your attorney
some questions, and we got answers back to some
of them that Troy treated with Dr. Martin
Chambers, Shirish Amin, and Satish Amerneni.

A. Right.

Q. I'm not talking about hospitals or
practices, I'm just talking about the
individuals. Do you remember the names of any
other individuals he treated with at any time
during his adult life other than those three?

A. No.

Q. No other general practitioners or
internal medicine doctors?

A. No.

Q. We have for hospitals that he went
to Allegheny General, Punxsutawney Area, and
DRMC Adult Behavioral Health Center.

A. Yes.

Q. Any others that you recall him going
to during his adult life for any reason?

A. No. None.

Q. Who was Troy's pediatrician growing up?

A. Dr. George Mosch from Coudersport,

1 B. Wingard - by Mr. Fields

2 Pennsylvania.

3 Q. What's his last name, ma'am?

4 A. Mosch, M-O-S-C-H.

5 Q. Do you recall the name of that
6 practice?

7 A. It was a family practice.

8 Q. Do you remember the name of his
9 practice?

10 A. It was just Dr. George Mosch.

11 Q. It wasn't like something something
12 health center or anything?

13 A. No.

14 Q. Was that Troy's pediatrician right
15 up until when he graduated high school?

16 A. Yes.

17 Q. Troy ever in the military?

18 A. No.

19 Q. In terms of Troy's colitis, tell me
20 what you remember, in terms of him talking to
21 you, if he did, about the problems he was
22 having.

23 A. Mostly if he would eat or drink
24 certain things, like milk or salads, greasy
25 foods, he would start getting a bad stomachache

1 B. Wingard - by Mr. Fields

2 and then have to go to the bathroom.

3 Q. Was he able to control it if he
4 stayed away from those foods?

5 A. No. He still had it. Those things
6 made it worse, but he still had it.

7 Q. Do you recall what medications,
8 whether prescription or nonprescription, he was
9 taking to treat that?

10 A. I don't recall it. I know that I
11 gave it to my attorney, the names, and I might
12 have even wrote it down on this discovery paper.

13 Q. In the five years before his death,
14 did Troy ever talk to you about any mental or
15 emotional problems that he was having?

16 A. No.

17 Q. Did you have any concerns about his
18 emotional or mental health?

19 A. No.

20 Q. All the way up until the incident in
21 October of 2010?

22 A. Well, a month before is whenever he
23 tried to commit suicide. I think yesterday you
24 said a whole year. It was not a whole year.

25 Q. You're right, ma'am, and I

1 B. Wingard - by Mr. Fields

2 apologize. All right. Troy's attempted
3 suicide was on September 2, 2010; correct?

4 A. Yes.

5 Q. Prior to September 2, 2010, did you
6 ever have reason to believe that he was
7 suffering from any kind of mental or emotional
8 issues?

9 A. Sometimes him and his girlfriend
10 would have an argument or something, but that
11 would be it, and then they would always make
12 up. It was never anything -- they were just
13 like a small argument they would have.

14 Q. So right up until September 2, 2010,
15 you thought everything was going okay for Troy,
16 other than this colitis issue?

17 A. Right. I knew he had, like,
18 emotional -- Troy always worked. He never
19 missed work. He enjoyed working, bringing
20 money into the house. I know that would be a
21 stress on him.

22 Q. Did he ever tell you, I'm stressed
23 out because I can't work?

24 A. Oh, yes.

25 Q. Well, do you know if Troy had

1 B. Wingard - by Mr. Fields
2 applied for disability at any time during 2008
3 to 2010?

4 A. I do not recall, but I don't think
5 he did.

6 Q. He's got colitis, he's telling you
7 that he can't work because of this colitis, did
8 you or anybody else say, why don't you go and
9 apply for disability then?

10 A. I'm the one that told him to apply
11 for assistance, at least get assistance first,
12 and then I was telling him that we should apply
13 for disability.

14 Q. Was he resistant to that, or was he
15 open to that?

16 A. At first he didn't like the idea of
17 applying for assistance. He didn't like doing
18 anything with welfare. He preferred to work,
19 but he knew he couldn't.

20 Q. To your knowledge, prior to
21 October 2010, he never actually went in and put
22 in any forms for any kind of, separate from
23 ACCESS, any kind of Social Security Disability
24 or other type of --

25 A. No. None.

1 B. Wingard - by Mr. Fields

2 Q. When he attempted suicide on
3 September 2, 2010, were you surprised that he
4 did that?

5 A. Yes.

6 Q. Was that the first indication that
7 maybe something was going wrong with Troy?

8 A. Yes.

9 Q. Other than just the fact that he had
10 colitis and wasn't able to work?

11 A. Yes.

12 Q. Did you ever know Troy to use
13 illegal drugs prior to his death?

14 A. No. Back in Scranton once in a
15 while he would smoke some pot, but never
16 anything else.

17 Q. Other than smoking a little pot back
18 in Scranton, you never came to learn that he
19 was using any other drugs?

20 A. Never.

21 Q. Did you ever come to learn that he
22 smoked marijuana in Punxsutawney?

23 A. No.

24 Q. How about alcohol, did you ever know
25 Troy to use alcohol?

1 B. Wingard - by Mr. Fields

2 A. Maybe he would have a drink for New
3 Years.

4 Q. Wasn't a regular drinker?

5 A. No, no.

6 Q. So on a social occasion he might a
7 drink, but that was about it, to your knowledge?

8 A. Yes.

9 Q. Did you ever know Troy to abuse
10 Mucinex?

11 A. No.

12 Q. You understand that he had Mucinex
13 in his system on the night of the incident?

14 A. Yes.

15 Q. Did you ever tell anybody that you
16 were concerned that he was acting erratically
17 at any time because of his consumption of
18 Mucinex?

19 A. At that time or before or --

20 Q. Any time?

21 A. At that time I told him that I
22 thought he took too much Mucinex.

23 Q. Why did you tell him that, ma'am?

24 A. Because he was -- his behavior. I
25 could tell that he wasn't -- he just was -- he

1 B. Wingard - by Mr. Fields

2 looked like he was high, and he was acting kind
3 of -- he wasn't acting normal.

4 Q. Was he acting erratically?

5 A. Yes.

6 Q. Why did you think it was too much
7 Mucinex as opposed to something else?

8 A. Because he told me he took some
9 before. He said that it had helped his
10 colitis. And, also, the night that he was in
11 the hospital for the suicide attempt, the ER
12 doctor was right there, and he did tell me
13 himself, as close as me and you, he told me
14 that there is an ingredient in Mucinex that
15 does help Crohn's disease and colitis.

16 Q. So it's your testimony that prior to
17 the October 18 incident, you never knew Troy to
18 take too much Mucinex?

19 A. No, no.

20 Q. You never knew Troy to take Mucinex
21 to get some kind of a buzz?

22 A. No.

23 Q. Did you ever hear anybody else with
24 concerns that Troy might be doing that, taking
25 too much Mucinex?

1 B. Wingard - by Mr. Fields

2 A. No.

3 Q. Tim never came to you and said, hey,
4 Ma, Troy is taking Mucinex more than he should
5 to try and get a buzz?

6 A. No.

7 Q. So when you went there on
8 October 18, 2010, and he's acting erratically,
9 you immediately thought, oh, maybe he took too
10 much Mucinex?

11 A. Yeah. Because that's the only thing
12 I knew that he was taking. I didn't know if it
13 would do anything, and I never knew it up until
14 his death that something like that could affect
15 you, you know?

16 He was out of medicine too, so I
17 knew he didn't take an overdose or anything
18 extra of the medicine that he was on for his
19 colitis. He was out of it.

20 Q. Did somebody that night, October 18,
21 2010, say to you, oh, hey, Troy took a whole
22 box of Mucinex?

23 A. No.

24 Q. You have seen the police report in
25 this case; correct?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. You have seen the references in
4 there --

5 A. I didn't see the police report. I'm
6 sorry. I didn't see that at all.

7 Q. Are you aware that there's a number
8 of references of people telling the law
9 enforcement and medical responders that they
10 were concerned because Troy took a whole box of
11 Mucinex?

12 A. No. I do not recall that.

13 Q. So prior to October 18, 2010, you
14 had no concerns about Troy abusing any drug
15 whatsoever, prescription or nonprescription?

16 A. No.

17 Q. Well, then would it be your
18 understanding that Troy was not an experienced
19 abuser of Mucinex, if that makes sense?

20 A. Yes, it makes sense.

21 Q. Would you agree, then, to your
22 knowledge, he was not an experienced abuser of
23 Mucinex?

24 A. That's correct.

25 Q. Let's back up a little bit. Are you

1 B. Wingard - by Mr. Fields

2 doing okay? Do you want to take a break?

3 A. No. I'm fine.

4 Q. We usually break every hour, but
5 you're a trooper. So if you want to break, we
6 can break or we can just keep plugging along.

7 A. I would prefer to keep ongoing.

8 Q. Let's talk about the September 2,
9 2010, suicide attempt. Were you present with
10 Troy at any time prior to his arriving at the
11 hospital?

12 A. Yes.

13 Q. All right. When during that
14 incident?

15 A. I'm not sure about the time, but he
16 came to my house. I was in the bedroom, in
17 Tim's bedroom, talking to Tim. And the door's,
18 like, almost even with his bedroom, but the
19 door is different. I heard him come in. And
20 then from Tim's room I can look straight into
21 my bedroom, and I seen him go back to the
22 bathroom. I just thought maybe on the way he
23 had to hurry up and go to the bathroom because
24 he didn't say anything to me, he just walked in
25 and went straight to the bathroom. That was

1 B. Wingard - by Mr. Fields

2 the only time I seen him prior to his attempted
3 suicide.

4 Q. Do you know what he was doing at the
5 time?

6 A. At the time I didn't know.

7 Q. Did you come to learn after the fact
8 what he was doing?

9 A. Yes.

10 Q. What was he doing?

11 A. He took a box of Tylenol PMs that I
12 had a bottle of.

13 Q. So he actually walked from his house
14 over to your house, he came in and went into
15 the bathroom, he found the box of Tylenol PMs,
16 took them and returned to his house; correct?

17 A. Yes.

18 Q. It was after that he consumed the
19 Tylenol PMs?

20 A. Yes.

21 Q. Do you know if he took any Mucinex
22 that day?

23 A. I don't know anything else he could
24 have taken or would have taken.

25 Q. Did you ever talk with him about

1 B. Wingard - by Mr. Fields

2 that suicide attempt?

3 A. I did after he come home from the
4 hospital.

5 Q. What did you two discuss?

6 A. I asked him why he would do such a
7 thing.

8 Q. What did he say, ma'am?

9 A. He told me he felt like his life was
10 all messed up.

11 Q. Did he tell you why?

12 A. Because he was -- he couldn't get a
13 job, he couldn't keep a job, he was sick all
14 the time. He was depressed because he just --
15 sometimes he couldn't even make it to the
16 bathroom, or else if he drove someplace, he
17 couldn't get to a bathroom.

18 Q. So at that time he's upset because
19 he hasn't worked for a year and a half; correct?

20 A. Yes.

21 Q. He's got no money coming in except
22 support from friends and family; correct?

23 A. Right.

24 Q. He's not feeling good because of the
25 colitis?

1 B. Wingard - by Mr. Fields

2 A. Correct.

3 Q. You mentioned he said that he
4 couldn't get a job. Was that because nobody
5 would hire him or because he felt he could not
6 work?

7 A. He felt he could not work.

8 Q. That was because he couldn't manage
9 his colitis at that point?

10 A. Right.

11 Q. What did you tell him after he told
12 you that, if you recall?

13 A. I really don't recall right now. I
14 can't remember.

15 Q. Did you have just that one
16 conversation, or did you have more than one?

17 A. No. I had more with him, but it was
18 always about the colitis, how depressed he was.
19 But I would tell him that we all loved him and
20 stuff, you know, and I would help out as much
21 as I could.

22 Q. Was he in a pretty dark place after
23 that suicide attempt?

24 A. He was for about a week or two later
25 I think.

1 B. Wingard - by Mr. Fields

2 Q. Would you agree with me that he
3 certainly was in a pretty dark place at the
4 time he tried to commit suicide?

5 A. I would agree with that, but I
6 didn't notice it.

7 Q. Well, that was my next question that
8 you anticipated, that he must have been in a
9 pretty dark place if he was trying to commit
10 suicide, but somehow he managed to keep that
11 from you; correct?

12 A. Exactly.

13 Q. This was a big surprise to you;
14 correct?

15 A. Yes.

16 Q. It was not something where Troy had
17 come to you before September 2, 2010, and said,
18 hey, Mom, I need to talk to you. I have got
19 some stuff going on.

20 A. He never did.

21 Q. Then after the suicide attempt, he
22 was going for some sessions of behavioral
23 health; correct?

24 A. Yes.

25 Q. Counseling?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. Some psychotherapy?

4 A. Yes.

5 Q. Did he talk to you about that?

6 A. A little bit. Also, he was in the
7 hospital at DuBois, and we would go visit him.

8 Q. You mean DuBois Hospital?

9 A. It was DuBois -- they kept him after
10 that. They transferred him from Punxsutawney
11 to the hospital, or whatever it was, and they
12 kept him in there. They wouldn't release him
13 for 72 hours I think it was.

14 Q. Do you know if he was upset that
15 they wouldn't release him? Did he want to get
16 out of there, or was he okay there?

17 A. He was okay there, but I know he
18 wanted to go home too.

19 Q. You mentioned that Troy was always,
20 at least to you, he seemed like he was doing
21 okay except he would occasionally fight with
22 Kim Hall; correct?

23 A. Yes.

24 Q. How often would he and Kim fight in
25 the years leading up to his death?

1 B. Wingard - by Mr. Fields

2 A. I think I recall two times. That's
3 all I know of.

4 Q. Why do those two times stand out in
5 your mind? Anything significant? Not
6 significant, but anything that stands out?

7 A. Right. Troy told me that -- back in
8 Scranton or everything for Christmas and his
9 birthday, he liked the Broncos, so I would buy
10 plates. He had a collection of those. One
11 incident when Kim and Troy was fighting, Kim
12 picked up a plate or two and smashed them. And
13 I knew they were fighting then because he
14 mentioned it to me.

15 Q. And then the other incident, ma'am,
16 that you remember?

17 A. It was -- I found out later that
18 that's why he committed suicide, they were
19 arguing.

20 Q. Do you know what they were arguing
21 over?

22 A. Probably money, I'm assuming.

23 Q. Was money a source of stress in that
24 relationship, do you know?

25 A. Yes.

1 B. Wingard - by Mr. Fields

2 Q. That's because Troy told you?

3 A. Yes.

4 Q. Did Kim ever come to you about
5 concerns about the money situation or Troy
6 prior to the suicide attempt?

7 A. No. I don't recall. I don't think
8 she did.

9 Q. Do you know if their arguments ever
10 got physical?

11 A. No. They never did.

12 Q. So I believe you testified Troy was
13 kind of in a dark place for a couple weeks
14 after the suicide attempt but then seemed to be
15 getting better?

16 A. (Witness nodding.)

17 Q. So the first incident was September 2,
18 2010, and the next incident was October 18,
19 2010; correct?

20 A. Right.

21 Q. So you got about six weeks in there.
22 About four weeks you felt like he was doing
23 better?

24 A. Right.

25 Q. Anything happen in those four weeks

1 B. Wingard - by Mr. Fields

2 leading up to the October 18 incident that gave
3 you any concerns or caused you to talk with him
4 about any problems he might be having?

5 A. No. None.

6 Q. So when Tim told you on October 18,
7 2010, hey, Ma, there's something going on with
8 Troy, can you come over to Kim's house, was
9 that a surprise to you?

10 A. Yes, yes.

11 (Short recess taken.)

12 MR. FIELDS: I just want to
13 put a request on the record that if there are
14 any photographs that were taken of the incident
15 scene, that they be disclosed pursuant to
16 Rule 26.

17 MR. DONAHOE: Sure.

18 BY MR. FIELDS:

19 Q. All right, ma'am. I want to talk
20 about the incident on October 18, 2010. Let me
21 just tell you how I think -- well, let me just
22 tell you how I would like to go about it. I'm
23 going to ask you a general question, walk me
24 through everything that you recall about the
25 incident. And I may periodically stop you to

1 B. Wingard - by Mr. Fields

2 ask questions to clarify.

3 MR. FIELDS: I'm going to
4 encourage my colleagues here, just for the sake
5 of expediency, Mr. Weber and Mr. Donahoe, if
6 you have questions, jump in as we go through.
7 I would encourage that.

8 Q. But before we do that, I'm going to
9 ask you to draw the inside of Kim Hall's living
10 room and kitchen, if part of the incident takes
11 place in there, so that as we talk about this,
12 you can identify, you know, where people are
13 standing and where things are located. Is that
14 fair?

15 A. Uh-huh.

16 Q. So let me hand you -- we have plenty
17 of paper if you need to start over -- a pen and
18 paper.

19 A. Should I explain it while I'm
20 drawing it or just draw it now and then we'll
21 talk?

22 (Discussion held off the
23 record.)

24 (Defense Exhibit No. 3 was
25 marked for identification.)

1 B. Wingard - by Mr. Fields

2 Q. Ma'am, I'm going to hand you what's
3 been marked as Defense Exhibit 3. To identify
4 that for the record, is that a drawing that you
5 just prepared while we were off the record of
6 the incident scene?

7 A. Yes.

8 Q. Is that Kim Hall's house?

9 A. Yes.

10 Q. Just to orient everybody, as you
11 look at it and we go through the incident, is
12 this (indicating) how you want to look at it,
13 or do you want to turn it a different way?
14 Like this (indicating)?

15 A. This (indicating) is good. Or else
16 I'll turn it this (indicating) way.

17 Q. All right. So you have it right now
18 where the exhibit sticker is in the upper
19 right-hand corner; correct?

20 A. Correct.

21 Q. The kitchen is on the left side of
22 the paper, and the living room is on the right?

23 A. Uh-huh.

24 Q. To orient us to the scene, can you
25 tell me what's at the bottom of the picture

1 B. Wingard - by Mr. Fields

2 here?

3 A. On the left-hand side, that's where
4 you come into the house. There's a doorway
5 here (indicating).

6 Q. Would you mind just maybe writing
7 "door"?

8 A. Okay. I'll put the "outside door."
9 And then it's a hallway. And actually it
10 should extend down because the hallway goes
11 straight into the thing. You don't turn.

12 Q. So can we draw this (indicating) and
13 kind of scribble out that (indicating)?

14 A. Yeah.

15 Q. If you would like to do that?

16 A. (Witness complying.)

17 Q. Okay. Great.

18 A. And then come down the hallway.
19 You're in the living room, unless you turn
20 right, and then you're going down the hallway
21 to the bedrooms (indicating).

22 Q. And the hallway at sort of the
23 bottom of the page is the hallway to the
24 bedrooms; correct?

25 A. Yes.

1 B. Wingard - by Mr. Fields

2 Q. Then the hallway opens into the
3 living room, and then there's an entry into the
4 kitchen; correct?

5 A. There's an entry into the kitchen --
6 I'm sorry -- in this (indicating) hallway, just
7 a few feet from the front door.

8 Q. Okay. Let's back up a little bit.
9 Did you ever hear Troy use the term that he
10 felt like he was in a "black hole" with you?

11 A. A black hole, no. Not that I recall.

12 Q. In the week leading up to the
13 incident, did he ever tell you he was feeling
14 agitated or anxious?

15 A. No.

16 Q. Did you see anything that caused you
17 to feel maybe he was agitated or anxious that
18 week prior to the incident? I'm now talking
19 about October 18, 2010. We're past the suicide
20 attempt.

21 A. Okay. That would have been
22 September, not October. No. I don't recall.

23 Q. The day before the incident,
24 October 17, 2010, do you know how Troy spent
25 that day?

1 B. Wingard - by Mr. Fields

2 A. It would have been a Monday. Well,
3 usually every morning about nine he come over
4 to my house. They didn't have cable, so he
5 would come over to my house to watch TV. He
6 liked a certain show.

7 Q. Which show was that, ma'am?

8 A. I don't know the name. I know it's
9 something about two guys. Paranormal Behavior
10 or something. It's just -- I think there was a
11 show about ghosts or something. I'm not really
12 sure.

13 Q. Now, you said usually he comes over
14 in the morning and watches TV at your house
15 because you have cable. Do you specifically
16 remember if he did that or not on October 17?

17 A. Yes. He did that.

18 Q. So he came over to the house around
19 9:00 a.m.

20 A. Uh-huh.

21 Q. What happened next?

22 A. He stayed there and he watched TV
23 for a few hours or else asks me if I needed
24 anything done. And then sometimes he would go
25 back home. If any of the kids was home from

1 B. Wingard - by Mr. Fields

2 school, he wanted to come over, but that day
3 there was nobody home from school.

4 His usual routine for each day when
5 he was home was he made sure the dishes was
6 done, redd up some, and he would come over and
7 watch TV for a few hours.

8 He would leave and go back home. I
9 don't know what he did. Maybe he waited about
10 an hour, then he would come back and watch TV,
11 ask me if I needed anything done. He would
12 take the garbage down for me, things like that.
13 You know, if I needed something done around the
14 house he would, or else he would hang around
15 with Tim a lot.

16 Q. Was Tim working at that time?

17 A. No, he wasn't.

18 Q. How long had it been since Tim had
19 been employed?

20 A. Tim had trouble holding down jobs.
21 He was opposite of Troy. I think maybe
22 six months maybe.

23 Q. So Tim had been unemployed for about
24 six months?

25 A. Right.

1 B. Wingard - by Mr. Fields

2 Q. So he's around the house; correct?

3 A. Yes.

4 Q. Did Tim do things for you around the
5 house?

6 A. Oh, yes.

7 Q. He was living with you at that time;
8 correct?

9 A. Yes.

10 Q. Was Tim paying rent in those
11 six months?

12 A. If he was working, yes.

13 Q. If he wasn't working, he wasn't?

14 A. He would pay me some because I think
15 at the time he was on partial disability, and
16 he got, like, \$200 a month from welfare.

17 Q. What was his partial disability?

18 A. He had trouble with his neck and his
19 shoulder. Because back in Scranton whenever he
20 worked, he was doing some tree trimming, and he
21 fell out of a tree and had to be LifeFlighted.
22 So he still had problems with his neck and his
23 shoulder and his right leg.

24 Q. So was Tim around that day on the
25 17th, do you recall?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. So basically Troy comes over in the
4 morning, watches some TV, asks you if you need
5 anything done, goes back to his house for a
6 little bit, then comes back in the afternoon.
7 Did he do anything for you around the house
8 that day specifically that you recall?

9 A. I don't recall at all what he could
10 have did. He might not have even been there
11 the whole time. Him and Tim could have taken
12 the Jeep and maybe went to the store for me or
13 something. I just don't recall.

14 Q. Tim is living with you at that time
15 and had been living with you for a while;
16 correct?

17 A. Yes.

18 Q. And Tim did things around the house
19 for you; correct?

20 A. Yes.

21 Q. Was there much that you needed Troy
22 to do given that you had Tim living with you?

23 A. No. Troy was taller, so he did
24 things like change the light bulb more and
25 stuff like that.

1 B. Wingard - by Mr. Fields

2 Q. Did you have a lawn that needed
3 mowing?

4 A. Yes.

5 Q. Who did that?

6 A. Mostly Tim. And Troy would mow his
7 own yard with our mower.

8 Q. Was there any kind of like a weekly
9 chore or responsibility that Troy always did
10 for you or was it just if you happen to need
11 something and Tim wasn't available, you would
12 said, hey, Troy, can you do this?

13 A. Just occasionally I would have
14 things for him to do.

15 Q. All right. Anything stand out in
16 your mind about Troy's behavior the day before
17 the incident on October 17, 2010?

18 A. No. Nothing.

19 Q. Did Troy sleep at his house that
20 night, or did he sleep at your house on the
21 night of the 17th going into the morning of the
22 18th?

23 A. He slept at Kim's house.

24 Q. Did he ever come over and stay the
25 night at your house?

1 B. Wingard - by Mr. Fields

2 A. He did one -- a couple nights he
3 stayed whenever I lived at Sprinkle Mills, but
4 that wasn't in that same year at all.

5 Q. All right. It is now the morning of
6 the 18th, the day of the incident. Was that a
7 repeat of the prior morning?

8 (Discussion held off the
9 record.)

10 Q. I'm going to strike the last
11 question and ask a different question.

12 What do you remember on the morning
13 of the 18th in terms of when you saw Troy and
14 what he was doing that morning?

15 A. As I recall, he came over to watch
16 TV like he usually does, that hour-long show.
17 I don't remember too much about that day. But
18 he would go back and forth like he always did
19 since we lived so close. Sometimes he would go
20 home and take a nap or something, sometimes he
21 would fall asleep on the couch.

22 I do remember -- I do remember him
23 going out the door, and he gave me one big
24 smile. He was in a good mood. He gave me a
25 big smile.

1 B. Wingard - by Mr. Fields

2 Q. Was that in the morning, ma'am, or
3 the afternoon?

4 A. It was in the afternoon.

5 Q. Do you know if he spent some time
6 with Matthew, his nephew, that day?

7 A. Oh, yeah. For sure he did. He
8 always come over and seen Matthew.

9 Q. I have seen something in the record
10 that indicates that he and Matthew spent some
11 time together that day. I'm just wondering as
12 to what they did that day or if Matthew ever
13 talked to you about that?

14 A. Oh, they probably played catch or
15 else sat out on the porch. Troy always was
16 there for Matthew, teach him with baseball and
17 stuff. So Troy always -- they were like
18 buddies.

19 Q. Matthew ever say anything to you
20 like, oh, Grandma, I remember Troy was acting
21 funny that day, or anything like that?

22 A. No.

23 Q. Prior to that evening, when you got
24 a call from Kim that something was going on
25 with Troy, anything out of the ordinary that

1 B. Wingard - by Mr. Fields

2 day that you recall?

3 A. No. Nothing.

4 Q. All right. So it's that evening,
5 and at some point you get a call from Kim Hall;
6 correct?

7 A. Well, I didn't get the call, Tim
8 did. Because I think I might have answered it
9 and she asked for Tim, and then Tim got on the
10 phone and talked to her.

11 Q. Tell me, and this is where we're
12 going to start walking through the incident,
13 and I'm just going to ask you that big general
14 question. Walk me through everything that you
15 remember about the incident starting with that
16 call.

17 A. Okay. The first call I'm pretty
18 sure I answered the phone, and she asked for
19 him. Tim got off the phone and said, Mom, I'm
20 going over to Troy and Kim's, because I think
21 he said they were arguing or Troy was yelling
22 or something. So he went over --

23 Q. I apologize. Remember we're going
24 to --

25 A. Right. That's okay.

1 B. Wingard - by Mr. Fields

2 Q. Was this the first time Tim had ever
3 been called over --

4 A. Uh-huh.

5 Q. -- for something like this?

6 A. Yes.

7 Q. Were you a little -- so this was a
8 surprise to you?

9 A. Well, I mean, they would call and
10 talk to Tim on the phone, so the call wasn't
11 surprising. It was surprising that they asked
12 him to come over because Troy was yelling, and
13 he was upset, or just yelling. Tim went over.

14 Q. Approximately what time is this?

15 A. I think it was approximately around
16 10:30 as I recall. I'm not positive. But I do
17 know I was straightening up the kitchen, things
18 like that: putting things away or getting
19 things ready for Matthew for breakfast. I was
20 in the kitchen, that's why I answered the phone.

21 Q. Go on, ma'am.

22 A. Tim went over, and Tim didn't say
23 anything. I don't know what he said or what
24 they did, but he come back, and he said, Troy
25 is okay. There's nothing going on over there.

1 B. Wingard - by Mr. Fields

2 And then no sooner he sat down,
3 probably like it could have been about
4 five minutes later, Kim called again. I didn't
5 answer this time. Maybe I did. I just don't
6 recall who answered the phone. But Tim goes,
7 come on, Mom, we'll go over. You go over with
8 me. Instead of walking, we both got in the
9 Jeep and rode over.

10 Q. Let me stop you there, ma'am. When
11 Kim called again, do you remember anything?
12 Did Tim speak with her, or did you speak with
13 her?

14 A. Oh, with Kim? I didn't speak with
15 her. Tim did say that he thought Troy took too
16 many Mucinex, because he probably knew that --
17 well, we all knew that Troy was out of
18 medicine. He had to go back to the doctor's to
19 get a refill. It's not like I could give him
20 money for him to go down and refill it. I know
21 that he had to go back to the doctor's in
22 Indiana to get it refilled. He just kept on
23 putting it off.

24 Q. You say the doctor's in Indiana.
25 Which doctor was that? Do you recall?

1 B. Wingard - by Mr. Fields

2 A. It was one of the ones with the
3 strange names. I'm not sure which one.

4 Q. Did you usually give him a little
5 money to fill his prescriptions?

6 MR. WEBER: Just to clarify,
7 is that Indiana, Pennsylvania?

8 THE WITNESS: Indiana,
9 Pennsylvania.

10 MR. FIELDS: Thank you,
11 Travis. That's why I was confused.

12 Q. Again, you have to bear with me.
13 I'm not as familiar with the local geography.

14 A. Right. I'm sorry.

15 Q. No, no. It's on me. Okay, ma'am.
16 Do you remember anything else that Kim might
17 have said to Tim or Tim might have said to Kim
18 during that second phone call?

19 A. No. Just that Tim said, come on,
20 Mom. Come over and talk to Troy.

21 Q. Is that because Troy had gotten
22 upset again?

23 A. I guess, yeah. I think so.

24 Q. But you're not 100 percent certain.
25 It's kind of your understanding from the

1 B. Wingard - by Mr. Fields

2 circumstances?

3 A. Yeah. Understanding from Tim why he
4 would even ask me to go over, so that's why I
5 say it.

6 Q. I see. It's late, and it's dark, so
7 you jump into the Jeep and drive over?

8 A. Yes.

9 Q. What happens next, ma'am?

10 A. I stayed in the Jeep and Tim went
11 inside. I don't know, I'm assuming -- I think
12 that he talked to Troy. I know he did. And
13 then he come out on the porch and motioned for
14 me to come in.

15 So I went in. Tim stayed outside.
16 I just assumed he was smoking a cigarette. I
17 went in. I didn't know that he called 911. So
18 he already knew that Troy needed help.

19 I went in and Troy was just setting
20 there smoking a cigarette and watching TV, but
21 I sat down next to him. He looked over like if
22 he was kind of surprised: Mom, what's going
23 on? Because I don't usually go over there a
24 lot. Maybe during the day or something, but
25 just to pop in, I usually don't, not at night,

1 B. Wingard - by Mr. Fields

2 unless it was like New Years Eve or a holiday
3 or something.

4 Q. If it's okay, let me stop you there,
5 ma'am. Looking at Exhibit 3 that you drew,
6 where was Tim sitting when you came in -- I'm
7 sorry -- Troy sitting when you came in?

8 A. He was on the couch in the living
9 room.

10 Q. Where did you sit?

11 A. He sat towards the right, I sat on
12 the left of him. Or rather it would be facing
13 the other way. I sat on the right of him.

14 Q. He's on your left, you're on his
15 right?

16 A. Right.

17 Q. That's a coffee table in front of
18 the couch?

19 A. Yes.

20 Q. Is the TV on? Do you recall?

21 A. Yes. It was on because he was
22 watching TV.

23 Q. Tim is outside; correct?

24 A. Yes.

25 Q. You didn't know at the time what he

1 B. Wingard - by Mr. Fields
2 was doing, but you have since found out he was
3 on the phone with 911?

4 A. Yes.

5 Q. Anybody else in the room with you?

6 A. Yes. Whenever I walked into the
7 house from the front porch, Kim was in the
8 kitchen. She might have been drying dishes or
9 something. I don't know.

10 Q. Does Kim have children?

11 A. Yes.

12 Q. How many?

13 A. Four.

14 Q. Do you know if they were all in the
15 house that night?

16 A. They were, but they were in their
17 bedrooms.

18 Q. Do you know how many bedrooms in
19 that house?

20 A. Three.

21 Q. Do you know how big that house is,
22 approximately? Square footage?

23 A. No. I don't know that.

24 Q. Closer to 1,500 or closer to
25 5,000 square feet?

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2 A. Probably closer to 1,500. It's a
3 two-bedroom modular home; so --

4 Q. Two story, one story?

5 A. One story.

6 Q. That (indicating) hall goes to the
7 bedrooms; correct?

8 A. Yes. And the bathroom.

9 Q. Any point during the incident, did
10 any of the children -- did you see any of the
11 children before Tim was taken away by the
12 ambulance?

13 A. It was Troy.

14 Q. Troy. I'm sorry.

15 A. No. Not before.

16 Q. So you sit on the couch next to
17 Troy, Kim is in the kitchen; correct?

18 A. Uh-huh.

19 Q. And what happens next, ma'am?

20 A. Whenever I went into the living
21 room, I crossed the living room, sat down next
22 to Troy. I don't know if Kim was still there
23 or -- I know at one point she did go out on the
24 porch with Tim, but I don't know when. I just
25 know I was setting on the couch with Troy. He

1 B. Wingard - by Mr. Fields

2 was smoking a cigarette, watching TV.

3 I sat down, and he goes, Mom, what
4 are you doing here? I said, oh, Tim wanted to
5 come over and see you. And I also told him --
6 I could tell that he just looked like if he was
7 messed up or something, and I said, Troy, I
8 think you took -- I didn't -- I knew that he
9 took the Mucinex. That's the only thing he had
10 to take, like I said, about the prescriptions.

11 And I go -- and, plus, Tim told me
12 he was messed up on that. I told him, Troy, I
13 think you need to go to the ER because you took
14 too many of those pills. And he goes, okay.
15 I'll go to the ER.

16 Now, whenever Tim was there -- I
17 remembered this now, that Tim did tell me
18 something. He said that he wanted to take Troy
19 to the ER, but Troy would not go with him. He
20 also tried tricking Troy. He said, Troy, I
21 need cigarettes, let's go down and get
22 cigarettes. Troy told him, no, I'm not going
23 anywhere. But whenever I come in and asked
24 him, and I told him, Troy, you need to get to
25 the ER, and he said, okay, Mom.

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2 And I sat there waiting. I thought
3 Tim was outside having a cigarette or
4 something. I was waiting for him to come in,
5 and I was going to say, let's go. Troy is
6 going to go to the ER, but he didn't come in at
7 all.

8 Me and Troy sat there talking. He
9 gave me a lot of hugs that night while we was
10 setting there. We --

11 Q. Is it okay if I interrupt for a
12 minute?

13 A. Uh-huh.

14 Q. You said he's sitting there and he's
15 smoking a cigarette. Could you tell something
16 was going on with him? If you hadn't known
17 anything from Tim prior to walking in --

18 A. Right.

19 Q. -- if you had just surprised him,
20 was there anything going on that you observed?

21 A. No.

22 Q. So he seemed fine?

23 A. Yes.

24 Q. As you're sitting there, you said
25 you're talking and he's giving you a lot of

1 B. Wingard - by Mr. Fields

2 hugs; correct?

3 A. Uh-huh.

4 Q. Let me back up a little bit. Did
5 you at one point tell him that you thought he
6 took too many Mucinex?

7 A. Right.

8 Q. What did he say to you when you
9 asked him?

10 A. That's whenever I said, you took too
11 many Mucinex, and I think you need to go to the
12 ER, and he answered, okay.

13 Q. He didn't say, oh, no, I didn't, or
14 anything like that?

15 A. Nope. I don't remember him saying
16 that. I don't recall it.

17 Q. But then he's giving you lots of
18 hugs as you two were talking?

19 A. Yeah.

20 Q. Was that normal behavior for him?

21 A. No.

22 Q. Then did you think, okay, something
23 is definitely wrong here?

24 A. I could tell that maybe a few
25 minutes before, as soon as I started talking to

1 B. Wingard - by Mr. Fields

2 him.

3 Q. What was it about your conversation
4 that caused you to feel something was wrong?

5 A. Maybe the slurred words or
6 something. I really, really don't recall. And
7 also his eyes.

8 Q. So he was slurring his words, he was
9 giving you lots of hugs, and what was going on
10 with his eyes?

11 A. They were, like, glassy.

12 Q. Anything else you recall about his
13 appearance or behavior at that time?

14 A. No.

15 Q. Okay, ma'am. What happened next?

16 A. I don't recall the whole
17 conversation, but there would be times where we
18 would just be talking. I don't remember what
19 we was saying, though. I don't recall it. And
20 then there would be times where -- that's
21 whenever he turned around and said, I love you,
22 Mom. I said, I love you too, Troy.

23 And then he seemed okay. So I said,
24 Troy, I have to go to the bathroom. I will be
25 right back. He said, okay, and he just sat

1 B. Wingard - by Mr. Fields

2 there. He wasn't smoking a cigarette, he was
3 watching TV then.

4 I went down this (indicating)
5 hallway to the bathroom and then came back out.
6 Whenever you come down this (indicating)
7 hallway, you can see straight into the living
8 room. And I can see him on the couch. And he
9 was like this setting -- he wasn't laying down,
10 but yet he was setting. He turned and he had
11 his face in the sofa, and he was crying so
12 hard. It just wasn't a little cry, it was,
13 like, from the heart. He was really crying
14 hard.

15 I do remember Kim was in the kitchen
16 at the time because I was thinking, well, if
17 she loves him, why isn't she over there with
18 that kind of crying? I come over to him, and I
19 kind of put my hand on his shoulder. He sat
20 up. I said, Troy, what's wrong? Why are you
21 crying? He goes, Mom, because my life is so
22 messed up. And then I knew he meant the
23 colitis, you know, and not being able to work
24 and support, and he felt bad. I know he felt
25 really bad about that.

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2 And he says, my life is so messed
3 up. And I said, I know, Troy. We're just
4 going to have to get you back on that medicine,
5 and just do what -- maybe change doctors or
6 something. I can't really remember what we
7 said, but I know it was about his help that he
8 needs with his medical issues and stuff.

9 I was still waiting for Tim to come
10 up. I was assuming that he would be coming in.
11 But while I was setting there then, a few
12 minutes later we were setting there talking, I
13 think he was smoking another cigarette then.
14 Like, then we'd talk, and then he would turn
15 and watch TV, you know, or just be looking at
16 it, and then we would talk some more.

17 The next thing I know, I was looking
18 at Troy, he was kind of like tapping a
19 cigarette, and then he stopped and he just
20 looked up. I turned to look to see what he was
21 looking at, and it was the two police officers
22 in the room.

23 Q. Let me stop you there and go back a
24 little bit.

25 A. Okay.

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2 Q. From the time that you sat down with
3 Troy to the time that I believe they are
4 Pennsylvania State Troopers; correct?

5 A. Yes.

6 Q. I'm going to call them the Troopers.

7 A. Okay.

8 Q. From the time you sat down on the
9 couch with Troy to the time the Pennsylvania
10 State Troopers arrived, was he ever pounding
11 his fists?

12 A. Yes, he did. I just remembered
13 that. Not both of them. He just slammed his
14 fist down. This was before the crying
15 incident, okay? Before I went to the bathroom.
16 Just out of the blue he would hit his fist
17 down, and he would start yelling. I can't
18 recall what he was saying. Maybe he just,
19 like, swore a little bit, like damn it.
20 Something. One-word thing. And I said, Troy,
21 the girls are sleeping.

22 Then he might have yelled that or
23 something because I know that he was a little
24 bit loud, especially with the hitting on the
25 table, and that's why I told him the girls were

1 B. Wingard - by Mr. Fields
2 sleeping. He quieted right down. He didn't
3 hit the table anymore. And then we talked some
4 more. And maybe a couple minutes later he did
5 it again, and I said, Troy, the girls are
6 sleeping. I said, you got to stop making
7 noise. And then that's whenever he said, well,
8 Mom, where are the girls at? That's when I
9 said, they are in their bedroom sleeping. He
10 goes, oh, okay. That's whenever he started
11 crying.

12 No, he didn't start crying until
13 after I come -- I mean, he already started when
14 I went to the bathroom. But whenever I came
15 back, he said he was worried about Tim, and I
16 said, why? What do you mean you're worried
17 about Tim? He goes, well, where is Tim? I
18 said, I think he's outside on the porch having
19 a cigarette. Then that's whenever I went to
20 the bathroom, sometime around approximately
21 that time. I came back in, and he was crying.

22 Whenever he sat up, he was still
23 crying to me. That's whenever I asked him what
24 was wrong, and he told me his life was messed
25 up. I knew that he meant that he couldn't --

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2 because I was helping pay his rent. I was
3 paying my rent and also helped pay his rent and
4 things. And my Mom would chip in for the fuel,
5 because they got out of fuel one time, and that
6 made him stressed out too.

7 Like I said, the next thing I knew,
8 the police was in the room.

9 Q. So prior to those State Troopers
10 arriving, at first he seemed calm, but then you
11 noticed after talking to him for a little bit
12 that he seemed a little confused?

13 A. Right.

14 Q. Then at one point he started
15 pounding the table, and you had to tell him to
16 quiet down, then he was calm again?

17 A. Yes.

18 Q. Then he seemed confused? He didn't
19 know where the girls were; right?

20 A. Yes.

21 Q. Did he ask you at one point what's
22 going on, Mom? Do you remember that?

23 A. I think he asked me that right in
24 the beginning.

25 Q. Then he again was pounding the

1 B. Wingard - by Mr. Fields

2 table?

3 A. Just twice.

4 Q. So he did that twice before the
5 State Troopers arrived?

6 A. Right.

7 Q. You again had to ask him to calm down?

8 A. Right.

9 Q. So he's showing a range of behavior,
10 from calm to agitated to confused; correct?

11 A. Right. But he was calm, and he
12 seemed okay whenever the State Troopers -- I
13 don't know how long they were there. Probably
14 not very long. I mean, the living room is not
15 really big. It kind of looks big here
16 (indicating), but it's not. It's really
17 smaller.

18 Q. So at some point you realize the
19 State Troopers are in the room?

20 A. Uh-huh.

21 Q. How are they dressed?

22 A. In their uniforms.

23 Q. All right. That's the typical
24 Pennsylvania State Trooper uniform that you see?

25 A. Yes.

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2 Q. Did they have hats on? Do you
3 recall?

4 A. No.

5 Q. Describe that uniform for me.

6 A. It was blue and gray I believe.
7 They had their badges on.

8 Q. Clearly identifiable as State
9 Troopers? Would you agree with that?

10 A. Yes.

11 Q. In their State Trooper uniforms;
12 correct?

13 A. Yes.

14 Q. All right. So you notice that the
15 State Troopers are in the room. What happens
16 next, ma'am, that you recall?

17 A. At the time I didn't know, you know,
18 what their names was or anything. One goes to
19 Troy, what's going on, Troy? And --

20 Q. Let me stop you there actually,
21 ma'am. I apologize.

22 A. Okay.

23 Q. I appreciate your patience with me.
24 You're sitting on the couch with Troy, where
25 are they standing in the room?

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2 A. They are standing in front of the TV
3 facing the couch.

4 Q. The table is between you and the
5 Troopers?

6 A. Yes.

7 Q. Do you recall what they looked like?
8 Do you have a memory of what each of them
9 physically looked like in terms of maybe age
10 and physical appearance?

11 A. One, to me, seemed a little bit
12 stockier than the other one, and one was
13 younger. That's all I really remember.

14 Q. So there's an older Trooper and a
15 younger Trooper?

16 A. Yeah. He's not real old, but yet
17 you could tell there was an age difference.

18 Q. Who was the stockier one?

19 A. The younger one.

20 Q. How tall was Troy?

21 A. Troy was 6' 4".

22 Q. Did Troy have any experience with
23 martial arts or fighting training?

24 A. A little bit. He took some classes
25 back in Scranton, but he never received any

1 B. Wingard - by Mr. Fields

2 certificates or anything. Then he stopped
3 going. He only went maybe, like, three weeks,
4 and maybe one day a week. Three or four.
5 Because at the time he didn't have a vehicle,
6 so he was walking there. It started getting
7 cold, so he just stopped.

8 Q. He's 6' 4", he has had some fighting
9 training; correct?

10 A. I guess, yeah.

11 Q. Have you read the 911 call from Tim
12 to the police?

13 A. No.

14 Q. Are you aware that Tim told the 911
15 operator that Troy was tough and scrappy and
16 one hell of a scrapper?

17 A. No.

18 Q. Did you think Troy was a tough guy?

19 A. No. Troy wasn't.

20 Q. Did he and Tim ever fight?

21 A. Maybe growing up. Maybe once or
22 twice. Troy was pretty mellow. He always had
23 lots of friends come to the house, and he would
24 go to their place. He never had any fights.
25 No problems with anybody.

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2 Q. At least none that you're aware of;
3 correct?

4 A. Right.

5 Q. So when he and Tim, whenever they
6 would fight, who got the better of that? Tim
7 or Troy?

8 A. It was never physical. They never
9 fought physical. They would yell at each other
10 and stuff. Geez, I don't know who would get
11 the better. I think they would both say they
12 got the better of each one. Because they would
13 just plain stop because I would tell them to
14 knock it off.

15 Q. Was Tim a big guy?

16 A. He was stocky, yeah. He was big.

17 Q. How tall was he?

18 A. He was only I think 5'8" or 5'9".
19 He wasn't just stocky, he was heavy.

20 Q. So before I interrupted you, ma'am,
21 Troopers came in, they are in the room, and one
22 of them says, what's going on, Troy? What
23 happens next, ma'am?

24 A. I can't exactly remember. I can't
25 recall what Troy answered them then. But they

1 B. Wingard - by Mr. Fields
2 asked that a couple times. It wasn't just
3 once. Maybe Troy said nothing or -- because
4 they had to ask it more than once. I know they
5 asked different things too.

6 But I think he said the first time,
7 like, maybe nothing much or something like
8 that. And then they would ask him something
9 like -- well, it was always, like, the same
10 thing: What's going on? Or, yeah, mostly
11 what's going on? But it wasn't just a
12 plain-asked question like that, it was an
13 attitude they had with it. You can tell in
14 your voice: Well, what's going on now, Troy?
15 They would put that word "now" in the same
16 sentence a couple times, you know?

17 The one time Troy goes, I got it all
18 figured out. That was in the beginning, yeah.
19 One of them said, what do you got figured out?
20 And you could tell in the tone of their voice
21 it was not a regular -- it was like aggravating
22 like or something. Trying to -- like an
23 incident, like try to start something. Troy
24 goes, I got it all figured out. He goes, what
25 do you got figured out? And he goes, life.

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2 The one cop laughed. He goes, I would like to
3 hear about that.

4 And Troy stood up, and he goes --
5 well, I don't think he wanted to argue with
6 them or anything, especially in front of me,
7 but he goes, let's go outside. The one cop
8 said, no, I'm not going outside. And Troy,
9 like, touched his arm and said, come on and
10 let's go outside. And he goes, no, and don't
11 touch me. So Troy stopped touching him, and --
12 wait a minute. I got to back up.

13 Q. That's fine, ma'am. By all means.
14 Take as much time as you need.

15 A. I remembered -- I don't know if it
16 was before -- I don't recall if it was before
17 that he said that he got it figured out or
18 after about the life. But he goes, Troy
19 goes -- because they asked him again, what's
20 going on, Troy? And Troy goes, I'll show you.
21 I think it was after that. I'm almost positive
22 now. He said, I'll show you. And there was a
23 half-full bottle, about this (indicating) size,
24 of Pepsi, and it had a lid on it, and it was
25 half full. Troy picked it up and started

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2 twisting it. I don't know why he did that.
3 Maybe because he was messed up or something. I
4 don't know.

5 But I go, Troy, put that down.
6 You're going to break it, and it's going to
7 make a mess. He instantly put it down and
8 listened to me. So he just stopped that.
9 That's whenever -- yeah, he was standing up,
10 and I think I stood up then too because he was
11 doing that. And I said, Troy put that down and
12 leave it alone.

13 Then the same question: Now, Troy,
14 what are you going to do this time? Or
15 something like that. It was just their tone
16 and stuff, where they were trying to get to
17 him, trying to make him mad. Just like they --
18 well, I can't say what they were doing. It's
19 my opinion now.

20 That's whenever I think Troy had
21 enough of their same question over and over.
22 Then he took a step, and he didn't go like this
23 (indicating), like he was purposely going to
24 punch him, he put his arm back and then just
25 slowly swang around like if he was going to hit

1 B. Wingard - by Mr. Fields

2 him that way. I mean, usually someone doesn't
3 fight like that, you know, but that's what he
4 did. At that time, whenever he swung, the one
5 cop jumped back like, stepped back. He didn't
6 have to jump back, all he had to do was move
7 back a little bit. And instantly they both
8 tackled him then.

9 Q. Let's stop there for a moment and go
10 back through some of the testimony here. When
11 the Troopers are asking Troy questions and
12 before he twists the bottle, you and Troy are
13 still sitting on the couch; correct?

14 A. Uh-huh.

15 Q. It's some kind of 16 ounce Pepsi
16 bottle or something like this (indicating)
17 water?

18 A. Yes.

19 Q. There was some soda in it?

20 A. Yeah. It was probably about half
21 full.

22 Q. All right. So then Troy, did he
23 stand up or was he sitting when he was doing
24 this?

25 A. He was standing up.

1 B. Wingard - by Mr. Fields

2 Q. So he stands up. Did he stand up to
3 do that or was he already standing up?

4 A. He stood up to do that, yes.

5 Q. He started twisting it?

6 A. Yeah.

7 Q. Did you think he might rip it in
8 half?

9 A. Yes.

10 Q. You told him to stop?

11 A. Yes.

12 Q. Did you have any idea why he was
13 doing that?

14 A. I think he was getting a little bit
15 angry with them two.

16 Q. Was he acting angry? Troy, was he
17 acting angry?

18 A. Just -- that's unusual for him to
19 display any kind of anger really. I didn't see
20 him ever display much anger. But to pick that
21 up and pretend he's twisting it, that would
22 show me that he was angry.

23 Q. Where were the officers standing
24 when that happens? Are they in the same spot?

25 A. Yeah, the same spot. About the

1 B. Wingard - by Mr. Fields

2 middle of the room.

3 Q. Do you recall the approximate
4 distance from where you and Troy were on the
5 couch to where the State Troopers are standing?

6 A. I would say approximately, as I
7 recall, five or six feet.

8 Q. You didn't hear any of the 911 call,
9 so you don't know what information they had
10 walking into that house; correct?

11 A. Correct.

12 Q. There were four children somewhere
13 in that house at that time; correct?

14 A. Yes. I don't know if they knew that
15 or not, but yes.

16 Q. Prior to the physical contact
17 between the Troopers and Troy, where was Kim
18 during all of this?

19 A. Like I said, I seen her in the
20 kitchen. That was whenever Troy was crying.
21 That was the last time I seen her, in the
22 kitchen, until after the incident. I'm
23 assuming that she was out on the porch with
24 Tim.

25 Q. Okay. But would you agree with me

1 B. Wingard - by Mr. Fields

2 that you don't know, you weren't focused on her
3 whereabouts during the incident; is that
4 correct?

5 A. That's correct.

6 Q. So you don't know where she was
7 while all of this was happening; correct? When
8 I say that, from the time the Troopers arrived
9 until the time things got physical, you didn't
10 see her, did you?

11 A. I think I seen her maybe standing
12 back here (indicating) towards the hallway.
13 Because right through here (indicating), where
14 I put these (indicating) marks at, is a big
15 window with shutters so you can see into the
16 kitchen.

17 Q. From where the loveseat is, you
18 can't walk from the kitchen into the living
19 room there?

20 A. No. You go this (indicating) way.
21 They have it blocked off. But over here
22 (indicating) is the dining room and that big
23 doorway.

24 Q. Again, with the sticker on the top
25 right-hand corner at the top of the page, you

1 B. Wingard - by Mr. Fields

2 can go back through the living room and come
3 into the kitchen from there?

4 A. Yes.

5 Q. Did you see Tim during any of this
6 time, from when the Troopers arrived to when
7 things got physical?

8 A. No.

9 Q. Troy, at some point, gets up and he
10 walks toward the officers; correct?

11 A. Yes.

12 Q. Did he have to walk around the table
13 or was that a smaller table where he could just
14 get up and walk straight towards them?

15 A. That part I don't remember. I know
16 at one point whenever I was setting on the
17 couch, I was to his left. Yes. And then
18 whenever he stood up, I was to his right, so he
19 must have walked around in front of me and came
20 over here (indicating) beside the table and
21 stood.

22 Q. When you were facing the Troopers,
23 where was the older Trooper and where was the
24 younger Trooper? Do you recall?

25 A. Yeah. The older one was to the --

1 B. Wingard - by Mr. Fields

2 he was to the right, like closer to this
3 (indicating) doorway; and then the younger one,
4 yeah, the younger one was here (indicating).
5 That was before any of the physical things
6 happened.

7 Q. Okay. So you're sitting on the
8 couch looking towards the TV; correct?

9 A. Uh-huh.

10 Q. On your left is the older Trooper?

11 A. Uh-huh.

12 Q. On your right is the younger
13 Trooper?

14 A. Right.

15 Q. As Troy gets up and walks towards
16 them, did he come up to the younger Trooper,
17 the older Trooper, or both of them? Do you
18 recall?

19 A. The younger one I think, yeah.

20 Q. Then he reaches back, and he takes a
21 swing; correct?

22 A. Right.

23 Q. That was a punch; correct?

24 A. Correct.

25 Q. Did he try to punch the younger

1 B. Wingard - by Mr. Fields

2 Trooper or the older Trooper?

3 A. I am assuming it was the younger one
4 because he was the one with all the sarcastic
5 questions and remarks that he made to Troy.

6 Q. This is one of those things where
7 I'm interested in what you know versus what you
8 might be speculating about. So as you sit
9 here, do you know that it was the younger one,
10 or can you not remember, but you think it was
11 the younger one?

12 A. I'll give a percentage. I think
13 it's, like, 90 percent sure that it was the
14 younger one.

15 Q. Was this upsetting to you?

16 A. Yes.

17 Q. So you know something is going on
18 with Troy; correct?

19 A. Right.

20 Q. And you're concerned about him;
21 correct?

22 A. Correct.

23 Q. Now, some State Troopers come in;
24 correct?

25 A. Uh-huh.

1 B. Wingard - by Mr. Fields

2 Q. He's acting erratically and twisting
3 the bottle, and he goes over and he tries to
4 punch one of the State Troopers; correct?

5 A. Right.

6 Q. So --

7 A. Can I interrupt you, please?

8 Q. Yes, ma'am.

9 A. At that time when he went over to
10 punch him, I mean, this took a few minutes. Up
11 to that point, Troy was very calm. Whenever
12 they walked in, they seen him that he had to be
13 very calm because we was setting there for
14 about ten minutes just talking, and I know
15 nothing was going on the last ten minutes
16 before they showed up. So they knew he was
17 okay.

18 I mean, what I don't understand is
19 why didn't they call and okay the ambulance at
20 that time because that's whenever they started
21 with the arrogant questions. I mean, I'm just
22 saying one or two questions, but it was their
23 tone in their voice, how they kept on asking
24 it. That was almost the same question, and
25 that's what got Troy angry.

1 B. Wingard - by Mr. Fields

2 Q. Now, during the incident, you agree
3 with me that the first thing that Troy did that
4 was aggressive was trying to twist the soda
5 bottle and rip it in half; correct?

6 A. Yes.

7 Q. Did he do that before or after he
8 put his hands on the officers and said, let's
9 go outside, if you recall?

10 A. I don't recall. I can't recall if
11 it was before or after.

12 Q. At some point during this, though,
13 we know he's twisted the soda bottle; he's put
14 his hand on the officers to try to get them
15 outside; and he's taken a swing at the
16 officers, the State Troopers. Correct?

17 A. Right. I think that when he twisted
18 the bottle -- I lost my train of thought why I
19 was thinking that. I think that he did that
20 after that, he touched his arm and said come
21 out. I'm sure of it because that's whenever
22 they still asked him the same questions.

23 Q. Are you still sitting on the couch?

24 A. Whatever he twisted the bottle I
25 stood up.

1 B. Wingard - by Mr. Fields

2 Q. When he goes over and tries to punch
3 one of the officers, are you standing or sitting?

4 A. I'm standing. I moved over here
5 (indicating) toward the end of the room. Not
6 completely in the room but to the right, right
7 side of the room, right side of the table.

8 MR. FIELDS: It's not going to
9 be true north, east, south, west. Can we just
10 label it just like that to help orient
11 ourselves?

12 MR. DONAHOE: Yes. Whatever
13 you want. What I'm understanding is you're
14 saying you moved over to where you have marked
15 "window"?

16 THE WITNESS: Yes. Towards
17 the window.

18 Q. Do you mind if I make a little key
19 just for purposes of the record that says
20 north, south?

21 A. Yeah, yeah. But I was right next to
22 the table there too.

23 Q. So I have done north, south, east,
24 and west.

25 A. Okay.

1 B. Wingard - by Mr. Fields

2 Q. Hopefully I did that right. Does
3 that look reasonable to you?

4 A. Yes.

5 Q. So you moved sort of to the
6 northeast corner of the living room?

7 A. Right. I was right next to the
8 table, in between the table and the wall.

9 Q. And where at this time is Troy as
10 he's trying to punch the Trooper?

11 A. He was, like, near the table, but he
12 stepped away from the couch. They were, like,
13 in the middle of the room, and he was -- I
14 mean, the living room is small. I left a big
15 space, and it isn't that much space. The TV
16 should have been a lot closer. And so they
17 were -- Troy was about at the end of the table
18 standing there (indicating), to the west of the
19 table like.

20 Q. Do you want to, if you wouldn't
21 mind, put a "P" for where the punch occurred
22 approximately.

23 A. (Witness complying.)

24 Q. So you believe it was the younger
25 Trooper. Where is the older Trooper when this

1 B. Wingard - by Mr. Fields

2 happens?

3 A. He was, like, on this (indicating)
4 side of the Trooper. He was facing this
5 (indicating) way. This (indicating) one was
6 over here facing Troy too, but not -- this
7 (indicating) was facing him more like. He was
8 off to the side.

9 Q. So you have drawn two Xs. The X
10 closer to the table, is that the older Trooper?

11 A. Yes.

12 Q. Then the X further away is the
13 younger Trooper?

14 A. Yes.

15 Q. You are, again, in the northeast
16 corner; correct?

17 A. Yes. Right about here (indicating).

18 Q. You have drawn a third X. Do you
19 mind if I just circle it so it -- the X with
20 the circle is you.

21 A. Okay.

22 Q. So is this a fairly small space you
23 said?

24 A. Yeah. I mean, it only has maybe the
25 couch and the tables close, and then the TV is

1 B. Wingard - by Mr. Fields

2 maybe about four feet from the table.

3 Q. Would you agree with me that the
4 older Trooper is between you and the younger
5 Trooper?

6 A. Yes.

7 Q. Are you looking at the side of him
8 or the back of his head? How was he positioned
9 when Troy tries to punch the younger Trooper?

10 A. I don't recall the older Trooper at
11 all in my mind.

12 Q. But he's there?

13 A. Yes, he's there.

14 Q. He's standing between you and the
15 younger Trooper; correct?

16 A. Yes. Might not be directly between
17 us because I did see Troy, but I kind of like
18 blocked him out or something. I just don't
19 remember seeing him.

20 Q. That's fair. So you don't recall
21 exactly 100 percent where the older Trooper,
22 the younger Trooper, and Troy was when the
23 punch occurred?

24 A. Right. I'm sure they were close
25 together. I'm 100 percent sure they were both

1 B. Wingard - by Mr. Fields

2 close together. I mean, they were both in the
3 same area. I mean, it's not like one was -- he
4 might have been -- like I had the X a little
5 bit behind him, but not much. But he was
6 really off to the side.

7 Q. So the younger Trooper steps back
8 when Troy tries to punch him; correct?

9 A. Uh-huh.

10 Q. He put his arm up to block the
11 punch?

12 A. No. I didn't see that. I just seen
13 him lean back, and that was it.

14 Q. Is it possible the older Trooper and
15 the younger Trooper -- was it Troy's right arm
16 or left arm that he swung with?

17 A. His right.

18 Q. Do you know what a roundhouse punch
19 is?

20 A. That's the kind that he threw.

21 Q. A roundhouse comes around like this
22 (indicating)?

23 A. Yes.

24 Q. Would you agree with me it's
25 possible that the younger Trooper brought his

1 B. Wingard - by Mr. Fields

2 arm up to block it, but you couldn't see that
3 because you have got the older Trooper in front
4 of you (indicating), the younger Trooper
5 (indicating), and it would have been the left
6 arm that would have blocked it?

7 A. He didn't block it. I know he
8 didn't. He just leaned back. Just like
9 everything was, like, in slow motion for me as
10 I remember it. But I can picture it perfectly,
11 where he just either leaned back or took a step
12 back.

13 Q. You say it was slow motion as you
14 remember it, how did it feel like at the time
15 of the incident? Did it seem like things were
16 happening very quickly at that point?

17 A. Yes.

18 Q. Was your heart pounding, if you
19 recall?

20 A. I never thought about it, but I
21 assume that it probably was.

22 Q. I mean, this is not typical?

23 A. Right. It wasn't -- things happened
24 so fast. I mean, if it was, it was maybe a
25 little bit. Not until afterwards whenever

1 B. Wingard - by Mr. Fields
2 things really got heated up it really got going.

3 Q. Okay. So what happens after Troy
4 takes a swing at the younger Trooper?

5 A. Like I said, he took a step
6 backwards and leaned backwards, and they
7 instantly both at the same time tackled Troy.
8 And then this was in front of the -- so maybe
9 Troy was over here (indicating) a little bit
10 further because it happened --

11 The loveseat is not as big as the
12 couch, but they both tackled him and pushed him
13 onto the loveseat. He smacked his forehead on
14 that counter that's up on top where the window
15 is. Part of it got chipped and fell off. I
16 know that happened, but not the time.

17 Troy screamed, ow, and they both --
18 that's whenever he smacked his face real hard,
19 his forehead real hard. And then they both
20 held him down onto the loveseat. Troy was,
21 like, face down, and he ended up with his face,
22 you know, pushed against the back of the
23 loveseat.

24 They were trying to get his arms to
25 handcuff him. Troy never fought back except

1 B. Wingard - by Mr. Fields

2 for that one swing. After that, what he did
3 was he would break their grip, and then while
4 he was laying there, he would put his hands
5 underneath his stomach, and he kept on putting
6 his hands underneath his stomach. He did not
7 want to be cuffed.

8 Q. Are you familiar with the term
9 "turtling"?

10 A. No.

11 Q. Do you know how a turtle can go
12 inside its shell?

13 A. Yeah.

14 Q. Was Troy kind of like a turtle,
15 putting his arms in and covering up so that the
16 officers wouldn't be able to have that?

17 A. Yes.

18 Q. He's breaking their grip to do that?

19 A. Yes.

20 Q. Would you agree with me that that's
21 resisting their efforts?

22 A. Yes.

23 Q. I'm sorry, ma'am. Go on.

24 A. That kept up for a little while,
25 where they tried to grab him and then grab his

1 B. Wingard - by Mr. Fields

2 wrists. That happened a few times where they
3 tried to. Then the next thing I knew, I seen
4 the younger cop pull out I didn't know what it
5 was at that time. I never thought about that
6 they would use the stun gun. It just never
7 crossed my mind. But he never said anything to
8 Troy.

9 I remember one time he said, Troy,
10 stop resisting, but that wasn't in the
11 beginning. And they never said, Troy, stop it
12 or else I'm going to tase you. The officer
13 just pulled it out.

14 They keep their heat on real, real
15 low, so he wore a number of shirts. Probably a
16 T-shirt; long-sleeved shirt, maybe a few of
17 them; the outside was a heavy sweatshirt. I
18 remember them putting the taser against his
19 right side where his stomach was, or rib cage
20 or something. Nothing would happen.

21 So at first I didn't know what it
22 is. But that cop, the younger cop, said, pull
23 up his shirt, and the other cop pulled it, and
24 then he tased him. He held the gun against
25 there and then pulled it away, and that's

1 B. Wingard - by Mr. Fields

2 whenever Troy screamed.

3 MR. DONAHOE: Ma'am, can I
4 stop you for one second? Did you say the
5 younger cop is the one who tased him?

6 THE WITNESS: Yeah.

7 MR. DONAHOE: And he's the
8 same one who got punched at?

9 THE WITNESS: Yes.

10 MR. DONAHOE: Sorry.

11 THE WITNESS: I'm quite sure
12 about that.

13 MR. DONAHOE: I couldn't hear
14 because of the siren.

15 THE WITNESS: Right. As I
16 recall, that's who I'm thinking those two were.
17 I mean, it wasn't two, but I'm assuming that it
18 was the young guy that he was swung at and also
19 he's the one that used the taser.

20 MR. DONAHOE: Okay.

21 A. Troy screamed, slid off of the
22 loveseat, and was on the floor. That cop was
23 down, like, on his knees, but he put his knee
24 on Troy's side of his neck. And then right
25 then he pulled out the barbs. Troy was laying

1 B. Wingard - by Mr. Fields
2 on the floor. I don't remember him even moving
3 much. But he must have still been, you know,
4 not letting him handcuff him because the next
5 thing I knew, he put that stun gun up against
6 his neck once. I remember seeing that because
7 I remember the bolts of lightning. Not
8 lightning, but you know what the gun does.

9 BY MR. FIELDS:

10 Q. Electricity?

11 A. Yeah. I can see them. And it was
12 up against his neck. Troy, I don't know if he
13 screamed at that or moaned or something. I
14 know he screamed real loud when he first got
15 tasered with the barbs, and then they also
16 tasered him not with any more barbs. It was
17 just that one time with the barbs, the first
18 time, and after that was where they put it
19 against his skin.

20 They did that two more times. It
21 was on his back, in the middle of his back, but
22 a little to the left side I'm pretty sure, as I
23 recall. Then I don't recall where the last one
24 was. I just know for sure those three
25 positively for sure.

1 B. Wingard - by Mr. Fields

2 Then he was probably still moving
3 around, maybe struggling some, I'm not sure.
4 But they did get the handcuffs. One hand went
5 back and then the other hand, and they
6 handcuffed him.

7 Actually they handcuffed him after
8 the first time because after they handcuffed
9 him, he was still moving. I mean, he couldn't
10 move his arms because he was in handcuffs, but
11 he was still I would say struggling. He was
12 still moving. He was trying to get up. That's
13 whenever they tasered him two times, but I
14 found out that it was four times all together.
15 I don't remember the time on the thigh, on his
16 leg, at all. I just remember the three times
17 on his neck, back, and side.

18 They tasered him, and then he
19 stopped moving. He was, like, moving his legs
20 some, and that was the only part I could see
21 moving because the cop had his knee in the
22 middle of his back and on the side of his
23 throat holding him down. That guy was the
24 younger guy, and he goes to the other cop, he
25 goes, go out and get the shackles. So he did

1 B. Wingard - by Mr. Fields

2 and come back in.

3 Q. Do you mind if I just stop you
4 there, ma'am? Because that's a good point to
5 stop because we know the one Trooper is leaving
6 to get the shackles. We got quite a bit of
7 information there that I kind of want to walk
8 back through.

9 So is it your testimony that after
10 Troy took the swing at the younger Trooper,
11 that they both moved in on him and they all
12 went down onto the loveseat?

13 A. Yes.

14 Q. Was Troy on top of one of the
15 Troopers at that point?

16 A. No. He was on the bottom.

17 Q. Are you still standing in the same
18 spot where the X and circle are?

19 A. Yeah. I might have moved a little
20 bit closer because I remember how close they
21 were. Because I remember looking at Troy. I
22 could see his face and all of him at one point.
23 At other points I couldn't see his face, I can
24 just see maybe his legs.

25 Q. Now, it's your belief that Troy is

1 B. Wingard - by Mr. Fields

2 not trying to punch anybody anymore, but he is
3 resisting; correct?

4 A. Correct.

5 Q. The Troopers are struggling with
6 him; correct?

7 A. Correct.

8 Q. Troy is pulling out of their grips
9 and keeping his arms under him?

10 A. Yeah. He did that a few more times
11 after that, but then they was able to pull one
12 hand back.

13 Q. Do you recall how many times he was
14 able to do that?

15 A. I am thinking maybe three times.

16 Q. Now, you said that one of the
17 officers brought the TASER weapon out and
18 brought it up through his clothes. Did you
19 actually see any electricity during any of that?

20 A. No. I didn't see electricity then.

21 Q. At one point, one of the Troopers
22 says to the other one, pull up Troy's shirt;
23 correct?

24 A. Uh-huh.

25 Q. Where are the Troopers and Troy

1 B. Wingard - by Mr. Fields
2 right now when one of the Troopers says that?
3 Do you recall?

4 A. The older one was down by his legs
5 and probably between his knees or something, or
6 else on the other side of him. No, he can't
7 have been on the other side because the couch,
8 loveseat, was there. The other one was holding
9 him. Like I said, it would be his left knee on
10 Troy's neck, his right knee down on the floor.

11 Q. I'm sorry. Is Troy on part of the
12 loveseat at this point, if you recall?

13 A. Before they tased him, he was on the
14 loveseat, and they didn't have his knee on his
15 neck. He had his I think it was like this
16 (indicating) in his back. Probably this
17 (indicating) arm because they were pulling at
18 an arm. Each of them was pulling at an arm,
19 you know?

20 And then he brought out the taser
21 with this (indicating) hand, though. I
22 remember it was the right hand. So he must
23 have switched things; put that arm down. Then
24 when he went to put the gun against his
25 clothes, it didn't work.

1 B. Wingard - by Mr. Fields

2 And the other Trooper was down
3 further, but he was on the loveseat. Once he
4 got shocked, then he slid off of it. You know,
5 he screamed and slid off of the loveseat and
6 went on the floor.

7 Q. I apologize. Which Trooper was it,
8 the older or the younger one, that you believe
9 took the TASER weapon out?

10 A. The younger one.

11 Q. Okay. So which of the Troopers
12 pulled Troy's shirt up?

13 A. The other one.

14 Q. The older one?

15 A. Right. Maybe -- I mean, to me he
16 looked older. Maybe he's not. Maybe I got --
17 well, I could tell you who the younger one was.
18 It was Battestilli. That's the one I'm saying
19 is the younger one.

20 Q. How do you know that it is
21 Battestilli?

22 A. I have seen him before. The other
23 one, I don't know. I just seen him before and
24 knew his name afterwards. Actually I also
25 looked it up on Facebook, and I seen his

1 B. Wingard - by Mr. Fields

2 picture there, and I knew it was him.

3 MR. DONAHOE: Ma'am, he was
4 the one who was the one who Troy took the
5 roundhouse at, and he was the one who had been,
6 as you said, aggravating Troy with his
7 questions before?

8 THE WITNESS: Yes.

9 Q. At some point during this, are you
10 yelling at Troy to stop resisting?

11 A. Yes. I did yell at him and told him
12 that exact words: Troy, please stop resisting.
13 I'm not sure if I used the word "please," but I
14 did tell him to stop resisting. He was on the
15 floor at the time, after they used the taser.
16 Because that just scared me so much and --

17 Q. So were you telling him to stop
18 resisting before they used the TASER weapon?

19 A. No. I don't think so.

20 Q. Did you say anything that you recall
21 when things got physical before the TASER
22 weapon was used?

23 A. I might have said it before,
24 because, as I recall, I was in so disbelief
25 about the taser being used. I just -- I don't

1 B. Wingard - by Mr. Fields

2 know. I didn't know at that time what a taser
3 was. I never seen anything about it. I heard
4 the word "taser," and I heard the police use
5 it, but I just never even seen a picture of it
6 at that time. I think it was before that, but
7 I could be wrong, as I recall. I'm just not
8 positive.

9 Q. That's fine. This is a very
10 emotional situation both at the time and now as
11 you relive it; correct?

12 A. Correct.

13 Q. There's a lot going on, would you
14 agree with that?

15 A. Yes.

16 Q. You haven't been exposed to a lot of
17 physical altercations like this in your life,
18 have you?

19 A. No.

20 Q. Do you think you yelled that more
21 than one time at Troy or -- strike that. How
22 many times did you yell at Troy to stop
23 resisting and to let the Troopers cuff him?

24 A. Just once.

25 Q. That was after the TASER weapon was

1 B. Wingard - by Mr. Fields

2 deployed?

3 A. I'm not positive about that. I
4 can't recall.

5 Q. Then you recall what we call a drive
6 stun; right? Where it's pressed against the
7 body?

8 A. Yes. Once on his neck, and once on
9 his back that I recall, that I know of.

10 Q. You know now that you believe there
11 were three, but you only specifically recall
12 the two; correct?

13 A. No. I know there was four, but I
14 only recall three.

15 Q. I'm sorry. I was talking about the
16 three drive stuns. I'm sorry.

17 A. Oh, yeah.

18 Q. So you know there was the probe
19 mode, where the darts are shot; correct?

20 A. Right.

21 Q. Those were removed?

22 A. Yes. Then he screamed then again
23 whenever they pulled it out of his skin.

24 Q. Then there were drive stuns;
25 correct?

1 B. Wingard - by Mr. Fields

2 A. Correct.

3 Q. You recall two of the three drive
4 stuns; correct?

5 A. Correct.

6 Q. Those two drive stuns that you saw,
7 they occurred before the Trooper went to get
8 the shackles for the legs; correct?

9 A. I know one did, and that was behind
10 his neck, on the side of his neck. And then
11 they were able to --

12 No. As soon as they shot the barbs
13 into Troy, that's whenever it's like Troy got
14 really -- I mean, he tried it once, but he
15 wasn't so strong and resisting so much.

16 So they did get to put his arms back
17 there, but he was still like if he's trying to
18 get up, you know? And I think, as I believe
19 now, my opinion, I know whenever someone is on
20 you, you can't breathe. I think at the time he
21 was trying to get up, and he was moving his
22 feet, you know, just to get leverage maybe to
23 push himself and try to get up because maybe he
24 couldn't breathe. I didn't hear him say
25 anything after that. No, I did hear him say

1 B. Wingard - by Mr. Fields

2 something. I'm sorry.

3 But whenever he said, go out and get
4 the shackles, Troy was just moving his legs.
5 Right before he went out to get the shackles,
6 before the cop told him to, he goes, okay, I
7 give, I give, meaning he was going to quit, and
8 he did. He didn't move again, except for his
9 legs, and they were just, like, moving very
10 slowly. To me it was like if he was getting
11 leverage on the floor or something, trying to
12 push himself up.

13 Q. When he says I give, I give, that
14 was after the two drive stuns?

15 A. No. It was before the drive stuns.
16 It was after he got shot with the barbs.

17 Q. Okay. But he is still moving his
18 legs, and is he twisting and turning?

19 A. Yeah. A little bit. Like right
20 after that, they pulled them out, and he
21 screamed, and then they were able to handcuff
22 him. But he was still kind of like trying to
23 get up is what it is. That's whenever they
24 stunned him one more time. He was still moving
25 a little bit more. But he said, I give, I

1 B. Wingard - by Mr. Fields

2 give, and then they stunned him again. And
3 then he was quiet, and he did not move again.

4 Q. Well, he then is on the ground, they
5 have got his arms cuffed, and one of the
6 Troopers goes to get shackles; correct?

7 A. Right.

8 Q. How long did it take? How long was
9 that Trooper gone to go get those shackles? Do
10 you recall?

11 A. I don't recall. It seemed like a
12 long time, but I really honestly don't recall.

13 Q. Then when he gets back in with the
14 leg shackles, is Tim at that point holding down
15 Troy's legs?

16 A. I don't remember seeing Tim at all.
17 He stood behind the couch, and I do not
18 remember him holding his legs down at all.

19 Q. When you say the couch, do you mean
20 the loveseat or the couch?

21 A. No, no. The couch. He was behind
22 here (indicating) the whole time. Kim was in
23 the kitchen because I could see her, and she
24 was upset and crying. Tim was back here
25 (indicating).

1 B. Wingard - by Mr. Fields

2 MR. DONAHOE: Where is here,
3 ma'am?

4 THE WITNESS: Back behind the
5 couch (indicating). I'm sorry.

6 MR. DONAHOE: In the living
7 room?

8 THE WITNESS: In the living
9 room, but it was behind the couch. The living
10 room is like a long one, and it's L-shaped into
11 the dining room and then into the kitchen.

12 BY MR. FIELDS:

13 Q. Where are you when the shackles are
14 being placed on him?

15 A. I was between the table and the couch.

16 Q. Did you touch Troy at any point
17 during this time?

18 A. No.

19 Q. Did you check for a pulse at any
20 point during this time?

21 A. No.

22 Q. Did you check his breathing at any
23 point during this time?

24 A. No. I just assumed they were
25 professionals.

1 B. Wingard - by Mr. Fields

2 Q. My question, ma'am, is the only
3 individuals that were in physical contact with
4 Troy, to your knowledge, were the two Troopers
5 during this time?

6 A. That's correct.

7 Q. You don't have a recollection of Tim
8 holding down Troy's legs?

9 A. No, no.

10 Q. Is it possible that happened and you
11 just don't remember it or didn't see it?

12 A. I remember Tim telling somebody
13 that. But, to be honest with you, Tim likes to
14 make things up just to look good, you know? To
15 be like the important one or something. But I
16 do not recall him holding his legs down. I
17 recall Tim behind the couch the whole time.

18 Q. So after Troy groaned, I'm done, I'm
19 done, that was when they were finally able to
20 get his other arm and get him cuffed; correct?

21 A. Right.

22 Q. When you say Troy stopped moving,
23 you agree with me he stopped resisting?

24 A. Right. And moving. He didn't move
25 again after that.

1 B. Wingard - by Mr. Fields

2 Q. How do you know he didn't move
3 again, ma'am?

4 A. Because he was still, and I was
5 looking at him. The only thing that moved on
6 him -- okay. Right after that, the upper part
7 of him stopped because he was underneath that
8 cop, the police officer. His knee was on his
9 neck holding him. He had all of his weight on
10 Troy. His right knee was in the middle of his
11 back, and the left knee was in the side of his
12 throat, the side of his neck, and one hand was,
13 like, on Troy's head smashing it down.

14 I didn't see him move again after
15 the third, second or third, I am not positive.
16 But whenever he went out to get the shackles
17 and he come back in with them, he was still
18 moving his legs, but they were, like, very
19 slow. He must have grabbed his leg is what I'm
20 thinking to put the shackle on him. And then
21 whenever Troy felt that, maybe that's whenever
22 he started moving his legs. But they were so
23 slow and weak. It wasn't really kicking or
24 nothing. It wasn't kicking at all.

25 Q. It wasn't the type of resisting that

1 B. Wingard - by Mr. Fields

2 he had exhibited earlier?

3 A. Exactly.

4 Q. But he was moving his legs?

5 A. Right.

6 Q. This is after the officer comes back
7 with the shackles; correct?

8 A. Yes.

9 MR. FIELDS: This is probably
10 a good time to take a break.

11 MR. DONAHOE: Before we do,
12 can I just clarify a couple of things because
13 I'm going to get lost if we don't. Was it
14 Trooper Battestilli or the other one that went
15 out for the shackles?

16 THE WITNESS: The other one.

17 MR. DONAHOE: Was Battestilli
18 the one you said was kneeling on Troy's neck
19 and back?

20 THE WITNESS: Yes.

21 MR. DONAHOE: Those are the
22 two. I needed to get the lineup correct.
23 Thanks.

24 MR. WEBER: I have some
25 follow-up, but I'll ask it later.

1 B. Wingard - by Mr. Fields

2 MR. FIELDS: Sure. Let's take
3 a break.

4 (Lunch recess taken.)

5 MR. FIELDS:

6 Q. Ma'am, you understand you are still
7 under oath?

8 A. Yes.

9 Q. Before we went off the record, we
10 had you walk through the incident up until the
11 point in time where the Trooper had gone out to
12 get the leg shackles. Do you recall that?

13 A. Yes.

14 Q. You said that he went out there for
15 a while, and it felt like a long time to you
16 before he came back?

17 A. Yeah. Things are going on, so I
18 don't recall how long or anything.

19 Q. Are you able to estimate
20 approximately how long? And if not, that's
21 perfectly okay. You just need to let me know.

22 A. I really don't.

23 Q. Okay. When he comes back with the
24 shackles, does he place them on Troy?

25 A. Yes. Troy's legs. First one, and

1 B. Wingard - by Mr. Fields

2 that's whenever Troy moved a little bit of
3 Troy's legs, and he was able to put the other
4 one on very quickly.

5 Q. How was Troy positioned on the
6 ground with respect to the living room?

7 A. He was laying on the side facing
8 this (indicating) way, towards the inside of
9 the room, but he was laying down here
10 (indicating), towards the edge. And the one
11 cop that put the shackles on was right here
12 (indicating), and the other one was on top of
13 him.

14 Q. So to orient everybody, he was lying
15 sort of adjacent to the loveseat; is that
16 correct?

17 A. Uh-huh.

18 Q. Or parallel to the loveseat?

19 A. Uh-huh.

20 Q. Then you did an arrow from the
21 loveseat. So was he facing out, or was he
22 looking down?

23 A. He was facing out. He was, like, on
24 his side.

25 Q. His feet --

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2 MR. DONAHOE: I'm sorry. Out
3 towards where the window and door were?

4 THE WITNESS: Yes.

5 MR. DONAHOE: With his head at
6 the top and his legs near the couch?

7 THE WITNESS: Yes.

8 MR. DONAHOE: So he's on his
9 right side?

10 THE WITNESS: Yes.

11 MR. DONAHOE: Okay.

12 BY MR. FIELDS:

13 Q. So the officer's putting the
14 shackles on; correct?

15 A. Uh-huh.

16 Q. Then what happens next, ma'am?

17 A. They pulled him into the middle of
18 the floor. One of the officers pulled him into
19 the middle of the floor. It was about -- I
20 mean, it looks like a long ways, but it was
21 just pulled up here (indicating). He was
22 laying this (indicating) way. The officer that
23 was on top of him before was still on him.
24 This time they had him on his stomach, and the
25 officer had still his knee --

1 B. Wingard - by Mr. Fields

2 Let me see which way that would be.

3 I think Troy's face was still facing the same
4 way, and then he had his knee into his throat
5 and into his back. And the other officer was
6 down at the bottom by Troy's feet, but he was
7 already shackled. But they had him there.

8 That's when Tim spoke up. Well, Tim
9 was still behind the couch when this was going
10 on, and Tim spoke up and said, is he breathing?
11 It doesn't even look like he's breathing. The
12 older one said, yes, he's breathing -- no, I
13 got that wrong. I'm sorry.

14 First Tim goes, well, if he's
15 handcuffed and shackled, why do you still have
16 to be on him on top of him. He goes, whenever
17 he wakes up, he's going to be resisting again,
18 and I need to keep control of him. Tim goes,
19 well, is he breathing? It doesn't even look
20 like he's breathing.

21 The officer down by his feet said,
22 yes, he is. And he pulled up his shirt to look
23 at his chest to see if it was moving. He goes,
24 yes, he is. And the other one reached over --
25 he was off of him at the time whenever the

1 B. Wingard - by Mr. Fields

2 other one lifted up his shirt and stuff. He
3 was, like, both knees were on the floor -- and
4 he felt Troy's pulse on his neck, and he goes,
5 no, he's not.

6 I'm not quite sure who got up and
7 went out the door, but the door, Troy's storm
8 door, was broken. So it would open, but you
9 had to push it shut. It wouldn't automatically
10 shut. So the door stayed open. And we could
11 hear the officer making the call. He goes --
12 his exact words was, where's the ambulance? We
13 need the ambulance now. He's not breathing.
14 That's what he told them.

15 Then he came back in and he told us
16 that the ambulance is on the way. I was still
17 in the living room, still back here (indicating).

18 Q. When you say back here, you mean by
19 the X and the table?

20 A. Yeah. By the table and the couch.
21 I might have moved back and forth during the
22 incident, but I was still closest to the table.
23 I looked into the kitchen and seen Kim upset,
24 so I went around the couch and came in, and me
25 and her was hugging and crying. Tim was

1 B. Wingard - by Mr. Fields

2 crying. He was standing behind the couch
3 crying. And the two officers just stood there
4 by Troy. Troy was laying on the floor, but
5 they just stood there.

6 Q. Do you recall which of the Troopers,
7 and I know you know one by the name
8 Battestilli, and do you know the other one's
9 name?

10 A. Johnson I think.

11 Q. Do you know which Trooper -- I think
12 you answered this, so I apologize -- went out
13 to get the shackles?

14 A. Yeah. It would have been Johnson.

15 Q. Do you know which Trooper went out
16 to make that call?

17 A. No. I don't remember.

18 Q. Did Johnson put the shackles on
19 Troy's feet?

20 A. Yes.

21 Q. After Troy's moving of his legs,
22 which you described as not resisting, more of --

23 A. Right. Trying to move himself or
24 trying to --

25 Q. Did you see any other movements by

1 B. Wingard - by Mr. Fields

2 Troy after that?

3 A. Nothing. Whenever they moved him
4 over there, I don't know if it was right after
5 they moved him, I heard him gurgling. I think
6 maybe they were switching positions whenever
7 they were checking for a pulse.

8 Q. At any point in time during this
9 incident, were you ever able to touch Troy?

10 A. No. I wish I would have. I figured
11 they were professionals, that they were going
12 to handle everything.

13 Q. Now, you go into the kitchen after
14 you hear the telephone call; correct? To
15 comfort Kim, or was that --

16 A. I'm not sure. I don't recall if it
17 was before the phone call or after. I just
18 remember being in there.

19 Q. When this phone call takes place,
20 can you see the Trooper that's talking on the
21 phone or can you just hear?

22 A. No. I could just hear.

23 Q. Was there any other noise? Was
24 anybody talking? Was it just silent in the
25 house?

1 B. Wingard - by Mr. Fields

2 A. It was silent for maybe -- no,
3 because we all could hear him talking, so
4 everything was quiet.

5 Q. Did you hear the entire conversation?

6 A. Yes.

7 Q. Where were the kids during all of
8 this?

9 A. In their bedrooms.

10 Q. How do you know that?

11 A. Because I went back to check on them
12 then.

13 Q. Were they sleeping?

14 A. No, they weren't sleeping. They
15 were awake. The girls was crying. They could
16 hear things going on.

17 Q. Kim is in the kitchen crying?

18 A. Uh-huh.

19 Q. Is Tim asking questions or yelling
20 or talking or crying? What's Tim doing?

21 A. At the time of the phone call?

22 Q. Yes, ma'am.

23 A. At the time of the phone call, me
24 and Kim was both in the kitchen, Tim was by the
25 couch, and one officer was by Troy, and the

1 B. Wingard - by Mr. Fields

2 other one was right outside this (indicating)
3 hall. The kitchen, it might look like it's
4 big, but it's not. He went out this
5 (indicating) -- well, he came around and went
6 out through from the living room, out the back
7 door to the porch.

8 Q. So out of the living room, through
9 the hall, past the kitchen door, out to the
10 back porch?

11 A. Right. Like I said, it's a short
12 distance. The door stayed open, and we could
13 hear his conversation completely.

14 Q. You say we?

15 A. Me, Tim, and Kim.

16 Q. How do you know that Kim heard?

17 A. She told me.

18 Q. I am as guilty as you are, we're
19 both getting into that kind of conversational
20 thing. I apologize. I'm going to try and let
21 you finish.

22 A. Right. Okay.

23 Q. We're going to be in big trouble.

24 You're in the kitchen comforting

25 Kim. What happens next?

1 B. Wingard - by Mr. Fields

2 A. I was crying too. We was both
3 crying. I remember after he made the phone
4 call, he came back in and stood over top of
5 Troy with the other officer. They just stood
6 there. The one that came back in, he said the
7 ambulance is on the way. We didn't know what
8 to do or anything.

9 Then the ambulance did come, and the
10 paramedics came in. The one officer, I don't
11 know who it is, said, he is not moving. The
12 paramedics said, can you remove the handcuffs?
13 And he did. Then they started working on him,
14 doing CPR and asked me if I had given my
15 permission to work on him. I said, yeah, do
16 anything you have to do. And he said, okay.

17 Then I know they put a tube down his
18 throat, got him ready, and took him in the
19 ambulance.

20 Q. Was Tim crying at some point during
21 all of this?

22 A. Uh-huh.

23 Q. Was anybody yelling or anything?

24 A. No. No yelling.

25 Q. What happened after the ambulance

1 B. Wingard - by Mr. Fields

2 took Troy away? What was the next thing that
3 you did?

4 A. Me and Tim got in the car. Kim
5 stayed there; took the boys and the girls over
6 to my place to stay. They wanted out of that
7 area, out of the room, of the house. Her and
8 the kids stayed there with Matthew, and me and
9 Tim followed the ambulance down. Kim stayed at
10 my house. We followed the ambulance down to
11 Punxsutawney Area Hospital, and we was there
12 for a few hours. I'm not sure --

13 And there was a lot of police
14 officers around. One came out to talk to me; I
15 think he was a corporal or a captain. He
16 started asking me some questions. I can't
17 remember what the questions were. I think he
18 asked me two questions, and I cannot remember
19 what they are. That's whenever Tim spoke up,
20 do you think maybe we should get an attorney?
21 And the police officer just kind of yelled and
22 said, you don't need an attorney, that guy in
23 there, laying there in that bed needs an
24 attorney. Then we didn't talk anymore. He got
25 up and left.

1 B. Wingard - by Mr. Fields

2 Q. Then at some point the medical staff
3 told you that Troy was brain dead; correct?

4 A. No. They told me to come -- they
5 couldn't LifeFlight him because it was too
6 foggy. They had to take him by ambulance down
7 here to Allegheny Hospital here in Pittsburgh.
8 We followed them down.

9 We arrived here probably I'm
10 thinking maybe two, but I can't really recall
11 the exact time. I know I think we left around
12 five or something, but I'm not real sure.
13 While we was down here, they did more tests on
14 him, and then they told us he was brain dead.

15 Q. Did somebody tell the EMS that you
16 overheard that it was possible that Troy had
17 smoked marijuana that day?

18 A. No.

19 Q. You don't recall that?

20 A. No.

21 Q. Do you recall somebody telling the
22 EMS that Troy had taken a bunch of Mucinex once
23 before like this?

24 A. No. I just remember them asking me
25 if I knew he took any Mucinex, and I said, I

1 B. Wingard - by Mr. Fields

2 think he did, but I don't know how much.

3 Q. You're not aware -- I think we
4 talked about this so I apologize if I'm
5 replowing the ground -- but you're not aware of
6 any other instances where he took too much
7 Mucinex?

8 A. No.

9 Q. When did you first consult with a
10 lawyer following the incident?

11 A. I don't recall the exact date, but I
12 called one in Scranton.

13 Q. I'm not going to ask you about your
14 conversations, but I am entitled to know who
15 you called.

16 A. I called Dennis, Lenahan & Dempsey.
17 They were my worker's comp, and I didn't know
18 what to do. I was friends with Terry, and I
19 felt comfortable talking to Terry Dempsey. So
20 I called him and asked him what I should do.

21 Q. Was this within days of the incident
22 or weeks of the incident or months of the
23 incident?

24 A. I was thinking it was a few days,
25 but it could be close to a week.

1 B. Wingard - by Mr. Fields

2 Q. When you say you didn't know what to
3 do, what do you mean by that?

4 A. Well, I felt the police was in the
5 wrong with not treating him properly. I
6 figured -- I was thinking that was their
7 training, that they were supposed to be able to
8 resuscitate him, things like that. I thought
9 they were in the wrong, and I didn't know what
10 else to do. I didn't know who else could have
11 been in the wrong or anything. I just -- I was
12 at a loss. I didn't know what to do.

13 Q. You would agree with me that Troy
14 was acting erratically that evening; correct?

15 A. Yes. Sometimes.

16 Q. And would you agree with me that he
17 did attempt to punch a uniformed State Trooper
18 that evening; correct?

19 A. Correct.

20 Q. As we sit here today, do you think
21 that his ingestion of Mucinex played some role
22 in his behavior?

23 A. It could. I don't know about
24 Mucinex much.

25 Q. I'm not asking you as an expert on

1 B. Wingard - by Mr. Fields

2 Mucinex or its properties or effects.

3 A. Right.

4 Q. Do you just have a personal belief
5 one way or the other whether that Mucinex
6 somehow influenced his behavior that night?

7 A. Yes.

8 Q. Do you think that that drug, that
9 Mucinex, bears any responsibility for what
10 happened?

11 A. I'm not sure. I still believe that
12 there should have been more things done with
13 the police standing over him and stuff. So I
14 think it could have been resolved a different
15 way. Not just that it was, you know, the pills
16 itself, I think them irritating him and egging
17 him on and stuff, that's -- his mood just
18 changed then.

19 Q. Do you think that Troy bears any
20 responsibility at all for what happened that
21 night?

22 A. I'm not sure. I'm not sure.

23 Q. Let me ask the question about
24 Mucinex a little differently: Do you think
25 that the drug Mucinex and its effects bear any

1 B. Wingard - by Mr. Fields

2 responsibility for the events that happened
3 that night?

4 A. I guess. I just really don't know.

5 Q. Do you think that Troy's behavior
6 was appropriate that evening?

7 A. No. He should have -- whenever they
8 were being so arrogant and stuff, he should
9 have been more under control and just ignored
10 them.

11 Q. Now, one of the parties that you
12 have sued in this case is the company TASER
13 International. Are you aware of that?

14 A. Yes.

15 Q. Why are you suing TASER, ma'am?

16 A. Well, it was the taser gun that I
17 believe that hit close to his -- in the back
18 towards his heart, so maybe something caused
19 his heart palpitations or his heart not to be
20 quite correct, the beats and stuff.

21 And also how many seconds they did
22 it and stuff. I know that there was -- it's
23 supposed to be only certain seconds, and I know
24 the police know how to override those, what I
25 read about.

1 B. Wingard - by Mr. Fields

2 Q. So you think that the TASER weapon
3 somehow reached his heart and affected it?

4 A. Oh, yes.

5 Q. You think the electricity from the
6 TASER weapon reached his heart?

7 A. Yes.

8 Q. Have you seen the report that your
9 attorneys produced by a Dr. Cyril Wecht?

10 A. No.

11 Q. You have not seen that?

12 A. No.

13 Q. So you're not aware that your
14 attorneys have produced on your behalf a report
15 from this Dr. Wecht? Have you ever heard of
16 Dr. Wecht?

17 A. Yes.

18 Q. They produced this report from
19 Dr. Wecht that gives his opinion as to the
20 cause of Troy's death, or the mechanism.
21 You're not aware of that?

22 A. No.

23 Q. If Dr. Wecht opines that the
24 electricity didn't actually reach his heart,
25 thus causing him to go into cardiac arrest, do

1 B. Wingard - by Mr. Fields

2 you have any reason to disagree with him?

3 A. No.

4 MR. WEBER: Objection. You're
5 asking her about opinions that are the realm of
6 experts. We know she's here as a fact witness.
7 I have let you ask a few questions, but steer
8 clear of this. I don't think it's relevant to
9 this today.

10 MR. FIELDS: I think it's
11 certainly -- I don't think it's privileged or
12 confidential, so I'm going to ask the
13 questions. If you instruct her not to answer
14 them --

15 MR. WEBER: I'm not going to
16 do that. I'm only objecting to direct it back
17 to the factual, the facts that she's presented
18 here to testify to.

19 MR. FIELDS: Okay.

20 BY MR. FIELDS:

21 Q. So, ma'am, if Dr. Wecht does not
22 opine that the electricity from the taser
23 reached Troy's heart, do you have any reason to
24 disagree with me?

25 A. No.

1 B. Wingard - by Mr. Fields

2 Q. If that's true, do you still think
3 that TASER International bears some fault or
4 responsibility for what happened?

5 A. Yes, I do. Because he could be
6 wrong. I mean, he's only human too. So I
7 would still believe that they should be held
8 responsible.

9 Q. What if pepper spray had been used
10 instead of the TASER weapon, but everything
11 else happened the same way, including Troy's
12 death, would you think that the pepper spray
13 manufacturer was responsible?

14 A. No.

15 Q. That's because you think that tasers
16 can reach the heart and cause cardiac arrest?

17 A. Exactly.

18 Q. What do you hope to get from this
19 lawsuit? Some people file lawsuits because
20 they want money, some people want an apology,
21 some people want something else altogether.
22 What do you hope to accomplish with this lawsuit?

23 A. I would like an apology from the
24 police officers for sure. I would like some
25 money. I would like to be able to move from

1 B. Wingard - by Mr. Fields

2 this area, away from these cops, and go back
3 home and put Troy and Tim together in the
4 cemetery up there. I can't afford to do that.
5 You know, I would like to have something, a
6 memorial, near my house.

7 Q. It wouldn't be enough for you to
8 dismiss this case if you received an apology,
9 you would want some money as well; correct?

10 A. Yes.

11 Q. How much money are you hoping to get?

12 A. I don't know that.

13 Q. You have not thought about that?

14 A. No.

15 Q. If I ask you to sit here and think
16 about it for a few moments now, are you able to
17 tell me?

18 A. No. I don't know. I leave it up to
19 my attorneys. I don't even know where to start
20 for putting a price.

21 Q. Going back to the effects of the
22 TASER weapon --

23 A. Uh-huh.

24 Q. -- if I sat down and presented you
25 with the report of Dr. Wecht and all of the

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2 studies, and there have been hundreds and
3 hundreds and hundreds, on the effects of the
4 TASER weapon, and experts that were hired by
5 TASER and their reports, and they all agreed
6 that under the circumstances in this case, it
7 was impossible for the electricity from that
8 device to reach Troy's heart, would that still
9 not be enough to convince you?

10 A. No. The certain reason is that I
11 read a report that it does from the doctor.

12 Q. Do you remember the name of that
13 doctor?

14 A. I can't remember him. I did give
15 you -- I think I sent it to Devon.

16 Q. Was it a Dr. Zipes?

17 A. It might have been, but I'm not -- I
18 can't really recall.

19 Q. Are you aware that, setting aside
20 that Dr. Zipes' opinion is very controversial,
21 he says it is only possible when the taser
22 probes are directly over the heart in a very
23 small area of the chest (indicating)?

24 A. No. I didn't know that. I didn't
25 notice that in the report.

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2 Q. Even if I presented you with
3 testimony from Dr. Zipes who says it's
4 impossible for the electricity to reach the
5 heart when a taser is used in the neck or the
6 thigh or the back --

7 A. I understand about the neck and the
8 thigh. The back I disagree.

9 Q. So it doesn't matter what
10 information, you have a firm belief that you're
11 not going to be swayed from that the
12 electricity can reach the heart under the
13 circumstances at issue in this case?

14 A. From just one report, no. I would
15 need more.

16 Q. What was Troy wearing that evening
17 during the incident?

18 A. Blue jeans, a T-shirt, a long-
19 sleeved shirt, and a sweat shirt.

20 Q. So do you recall what kind of
21 T-shirt he had? Was it like a really thin
22 material or thick material?

23 A. A T-shirt was probably thin.

24 Q. A white T-shirt?

25 A. Yes.

1 B. Wingard - by Mr. Fields

2 Q. A Hanes undershirt type of thing?

3 A. Uh-huh.

4 Q. What's the long shirt? Do you
5 recall?

6 A. It was a heavier -- it was a jersey.
7 It didn't have a hood on it, but it was a
8 sweatshirt.

9 Q. I thought -- but did he have
10 three shirts or two shirts?

11 A. Probably three: a T-shirt; a
12 long-sleeved shirt that wasn't all that heavy,
13 but it did have long sleeves; and then a
14 sweatshirt over top.

15 Q. Was the long-sleeved shirt like a
16 T-shirt material maybe?

17 A. Yes.

18 Q. Was it a waffle shirt or --

19 A. No. It was just a regular cotton
20 shirt.

21 Q. And a regular sweatshirt?

22 A. Yes.

23 Q. Did you maintain or preserve any of
24 those clothes?

25 A. No. The hospital took them off of

1 B. Wingard - by Mr. Fields

2 him.

3 Q. Do you recall Tim apologizing for
4 Troy's behavior to law enforcement during the
5 incident?

6 A. No. That was the first I heard
7 anything about that.

8 Q. Did Troy owe you any money at the
9 time of his death?

10 A. No. I don't think so. There's a
11 lot of times where I didn't expect it back, and
12 I told him not to worry about it.

13 Q. Did you incur any expenses arising
14 from Troy's death in terms of funeral or the
15 burial or anything like that?

16 A. Yes.

17 Q. Do you recall approximately how much?

18 A. Probably about \$4,000.

19 Q. How often in the year leading up to
20 his death would you and Troy spend time
21 together?

22 A. How often?

23 Q. Yes, ma'am.

24 A. Every single day. Except whenever I
25 lived over Sprinkle Mills. I lived on the

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2 other side of town, and he lived on the other
3 side of town, so he had to drive to come and
4 visit me. There was maybe, like, two or
5 three days that we would go without seeing each
6 other, but that would be the longest.

7 Q. Prior to his death, you had the
8 conversations with him about getting onto
9 disability; correct?

10 A. Right.

11 Q. Do you know, was he taking any steps
12 towards doing that at the time?

13 A. No. I know he didn't because Troy
14 didn't like doing things like that by himself,
15 any paperwork or anything. So he always left
16 it to me.

17 Q. Were you planning on gathering that
18 material together for him?

19 A. Yes.

20 Q. If he hadn't passed away, you would
21 have gone ahead and done that?

22 A. Oh, yes.

23 Q. I want to just talk a little bit
24 about Tim. I know this isn't easy either. Tim
25 passed away on February 1, 2013; correct?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. Was that as a result of a suicide?

4 A. No, no. He was a diabetic, and he
5 didn't have it under control. And even toward
6 the end he said he wasn't a diabetic, and he
7 didn't care. He quit taking his insulin,
8 everything. He just didn't care he said.

9 Whenever the paramedics came, they
10 tried to get a reading, and it was so high they
11 couldn't even read it. So they were also
12 saying that he went into diabetic shock.

13 Q. I have seen something in the
14 material that indicated Tim died of an apparent
15 drug overdose?

16 A. Right. He did overdose.

17 Q. What did he overdose on?

18 A. Mucinex.

19 Q. Did Tim blame Mucinex for Troy's
20 death after Troy's death?

21 A. Yes.

22 Q. Did you talk with him about that?

23 A. I probably did, but I can't really
24 recall what was said and when it was. But I
25 know he did blame it.

1 B. Wingard - by Mr. Fields

2 Q. Do you recall an incident at a
3 Wal-Mart I believe where Troy was arrested --
4 Tim was arrested?

5 A. Tim was arrested, uh-huh.

6 Q. Have you seen any police report or
7 the video from that?

8 A. No.

9 Q. Did he talk to you about this
10 incident?

11 A. Yes. He said that he was taking it
12 off the shelf and smashing it all up.

13 Q. Did you ever see Tim abusing Mucinex
14 prior to his death on February 1, 2013?

15 A. Yes.

16 Q. When did he start abusing Mucinex?

17 A. It was in 2010, but I'm not sure --
18 maybe like January, February, March. Something
19 like that.

20 Q. This was before Troy's death?

21 A. Yes.

22 Q. Did Troy know that Tim was abusing
23 Mucinex?

24 A. I don't know that. He could have
25 known. He had never mentioned it to me.

1 B. Wingard - by Mr. Fields

2 Q. You and Troy never discussed that
3 i s s u e ?

4 A. No.

5 Q. Then on February 1, 2013, Tim had an
6 overdose of Mucinex; correct?

7 A. When was it now?

8 Q. February 1, 2013, Tim overdosed on
9 M u c i n e x ?

10 A. Yeah. That's what they are saying.

11 Q. Did he have any other drug or
12 anything in his system that you know of?

13 A. No.

14 Q. So did you find him, or did somebody
15 else find him?

16 A. I was in the home at the time. He
17 acted confused, and he fell down. Then he got
18 back up and went into the bathroom, and he fell
19 in there. That's where I tried to get him out,
20 and I couldn't get him out. Finally he crawled
21 towards the bedroom, but he couldn't make it
22 any further.

23 He complained of his arm hurting.
24 He was very, very thirsty. He just kept on
25 wanting glasses of water. He peed on the

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2 floor, so I went in and scrubbed it in the
3 bathroom. I come back and looked at him, and
4 he looked like he wasn't breathing.

5 Matthew was in the next room. He
6 could hear me, see me, but he couldn't see his
7 dad because he was laying on the hallway floor.
8 I yelled, Tim, and I think I was shaking him,
9 trying to wake him up. I think when Matthew
10 heard from the tone of my voice he came in.

11 I go, come on, Matthew, we got to
12 turn him over. So we tried to turn him over,
13 got him mostly turned over, almost clear on his
14 back. That's whenever I started CPR. I said,
15 you get that phone and call 911. I tried doing
16 CPR to him. I talked to the 911 operator. He
17 was telling me everything what to do. It was
18 just so hard. He said even have Matthew help
19 me, and he did.

20 Matthew afterwards just held his
21 hand. We couldn't revive him. The paramedics
22 came, and they couldn't revive him.

23 Q. Was an autopsy done, ma'am?

24 A. No.

25 Q. Did anybody make a determination as

1 B. Wingard - by Mr. Fields

2 to cause of death?

3 A. Yeah. The coroner that came.

4 Q. So with no autopsy there was no
5 analysis of his heart; correct?

6 A. No. That's correct.

7 Q. But the coroner did tell you that he
8 believed that the mechanism of death was sudden
9 cardiac arrest due to an apparent drug
10 overdose; correct?

11 A. Right.

12 Q. But you believe that diabetes -- I'm
13 sorry -- shock?

14 A. Shock.

15 Q. Played some type of role in that?

16 A. Yes.

17 Q. Do you believe that the Mucinex
18 played any role in Tim's death?

19 A. I don't know. I just know that if
20 you're a diabetic, you are more likely to have
21 a heart attack than a normal person. I mean,
22 it could have, but I don't know.

23 Q. Do you know if Troy ever read the
24 warnings that came with Mucinex?

25 A. I don't know.

1 B. Wingard - by Mr. Fields

2 Q. Have you ever read the warnings that
3 come with Mucinex?

4 A. No. I think I looked it up online,
5 and I think it said something about respiratory
6 problems.

7 Q. Would you agree with me, though,
8 that both with Tim and with Troy, both of those
9 gentlemen, unfortunately, took a large enough
10 dose of Mucinex to affect their behavior, both
11 in the incident involving Troy which gives rise
12 to this case and the incident leading to Tim's
13 death?

14 A. I believe -- no. I'm going to
15 disagree with that because I believe Tim
16 enjoyed getting high. He would do whatever he
17 needed to do. I mean, you have his report.
18 You know that he was arrested for stealing the
19 Mucinex. So I know that, and we had talked
20 about it.

21 I never had any problem with Troy.
22 Troy never came to me for money for it like Tim
23 did. If I did have the money, I would actually
24 lie to him and say, no, I don't have any money.
25 That's whenever he would go and steal it. So

1 B. Wingard - by Mr. Fields

2 most of the time I would just give him money to
3 buy it.

4 Q. This began happening in early 2010
5 with Tim?

6 A. Yes.

7 Q. Troy was aware of this issue with
8 Tim?

9 A. Oh, yes. Because he was at the
10 Wal-Mart one time whenever Tim didn't come back
11 out and he seen the cops go in.

12 Q. Your ex-husband, Perry Hooftallen,
13 one of the measures of damages in a wrongful
14 death case is quality of the relationship.
15 Just your personal opinion, do you think Perry
16 Hooftallen is entitled to any damages for loss
17 of the relationship?

18 A. Well, legally I would say yes
19 because I know that he's supposed to, but, in
20 my opinion, since Troy did not like him, did
21 not get along with him, I would say no. But
22 I'm okay with him getting anything that would
23 happen.

24 Q. Ma'am, this is the last question
25 I'll ask you before I turn this over to the

1 B. Wingard - by Mr. Fields
2 other attorneys, although I may have a few
3 follow-ups when they're done. It's a difficult
4 question which is one of the reasons I save it
5 for last.

6 Your attorneys may ask you at trial
7 how Troy's death has affected your life. So
8 this is my opportunity to fully go down the
9 road to hear from you. So with that, I'll ask
10 you how has Troy's death affected your life?

11 A. Well, I know you're not supposed to
12 have favorites with your kids. It's hard not
13 to with certain kids, you know? Troy was my
14 favorite. I love my other two as much, but
15 Troy was my favorite. Troy would do anything
16 for me. He helped me all the time. He was
17 there for me whenever I had problems with my
18 workers' comp and whenever I had surgery done
19 and stuff.

20 Whenever he was working, he worked
21 constantly. He wasn't hurting for money
22 because he would leave his checks go without
23 cashing them. If I needed money, he was always
24 there for me. It didn't matter how much.

25 He was also there for Kim. Whenever

1 B. Wingard - by Mr. Fields

2 her gas got shut off at the house, he gladly
3 paid it to get it turned back on, whenever he
4 lived in Scranton. He wasn't living with her,
5 he was still living at my place, but he still
6 helped her.

7 To me, he was a very bright young
8 man, and I think he had a very good future.

9 Q. Actually I do apologize, I do have
10 one or two follow-up questions. Have you been
11 doing anything to try and either come to terms
12 or heal following Troy's death, whether through
13 church or therapy or friends?

14 A. I thought about going to counseling.
15 There's a church counseling, but I haven't made
16 it there. See, I never got my license. I just
17 got my permit. Whenever I was young, my dad
18 died. I was next in line to get my license,
19 and it was just kind of pushed aside.

20 For years and years I always had
21 Troy to take me places, so I just put it off.
22 So I just didn't go places that I should have
23 went, you know?

24 Q. In the two, two-and-a-half years
25 following Troy's death before Tim's death, were

1 B. Wingard - by Mr. Donahoe
2 you starting to feel like you were coming to
3 terms at all with it or were you making any
4 improvements?

5 A. I was. Yes, I was. But Tim wasn't.

6 Q. Then with Tim's death, was that a
7 new injury?

8 A. Yes.

9 Q. All right. Now you're having to
10 heal from that; correct?

11 A. Right. I wasn't even over the first
12 one, so it's hard.

13 MR. FIELDS: With that, thank,
14 you, ma'am.

15 - - - - -

16 EXAMINATION

17 BY MR. DONAHOE:

18 Q. Ma'am, my name is Tom Donahoe. I
19 represent the State Troopers in this case. I'm
20 a Deputy Attorney General, and we represent the
21 State agencies when they get sued. I'm going
22 to ask you a few questions about the incident
23 and what you know and a few things about your
24 son, Troy.

25 A. Okay.

1 B. Wingard - by Mr. Donahoe

2 Q. First of all, let me ask you, did
3 you ever talk to the coroner about this case?

4 A. On the phone.

5 Q. Okay. Do you remember, first of
6 all, when you spoke to the coroner?

7 A. It was probably March 2011.

8 Q. That would be a full year after the
9 incident?

10 A. No. It was from October 2010 to
11 March.

12 Q. Five months afterwards?

13 A. Yeah, yeah.

14 Q. At the time that Troy died and this
15 incident occurred, you did not speak to anybody
16 from the coroner's office in that immediate
17 time period?

18 A. No.

19 Q. What was the occasion that caused
20 you to speak to the coroner in March of 2011?

21 A. I don't know if he called me or if I
22 called him, but it was something about the
23 results of the autopsy.

24 Q. What did the coroner tell you?

25 A. That he was going to put it down as

1 B. Wingard - by Mr. Donahoe
2 accidental death. He told me on the phone that
3 he believed that positional asphyxiation had a
4 part of it, Troy's death. He also told me that
5 he believes that the taser did. He told me
6 that Troy had a blockage of 70 percent, but he
7 did not believe that that caused the death.

8 Q. Where did you have the conversation
9 over the phone? Were you in your home?

10 A. Yes.

11 Q. Was it just you on the phone, or
12 were you on a speakerphone?

13 A. It was just me.

14 Q. Do you recall anything further about
15 the circumstances that caused you to have that
16 conversation? In other words, were you calling
17 there at the behest of somebody else?

18 A. No. It would have been just for
19 myself, and for me and Tim to find things out.

20 Q. Do you recall what person you spoke
21 to from the coroner's office?

22 A. He had a really strange last name.
23 Maybe it was Polish or something. I'm not sure.

24 Q. Was it Dr. Luckasevic?

25 A. Yeah.

1 B. Wingard - by Mr. Donahoe

2 Q. Did Dr. Luckasevic tell you anything
3 further about why he thought that positional
4 asphyxia had something to do with the death of
5 Troy?

6 A. Because I explained to him what I
7 seen at the incident.

8 Q. When did you explain that to him?

9 A. Probably earlier, right whenever he
10 was starting to do the deposition or whatever.
11 Whenever he was going to write down his report.
12 But also he told me that oxygen to his brain
13 was very low or something.

14 Q. By the way, it is Todd Luckasevic.

15 A. Yes.

16 Q. That's L-U-C-K-A-S-E-V-I-C. So
17 there was a time earlier when you spoke to the
18 coroner, Dr. Luckasevic?

19 A. Yes. Probably maybe a couple times,
20 just to call and see if he had the results.

21 Q. Was it at that earlier time that you
22 explained to him what you had seen?

23 A. It might have been, but I'm not real
24 sure. I really can't recall.

25 Q. Did you tell the doctor that the

1 B. Wingard - by Mr. Donahoe

2 Troopers had placed a knee on Troy's neck?

3 A. Yes.

4 Q. Did you tell them that they had
5 placed their knee on his upper back?

6 A. Yes.

7 Q. Do you recall how long you told them
8 that the Trooper's knee was on his neck, Troy's
9 neck?

10 A. No. I don't recall how long.

11 Q. Did he ask?

12 A. I don't think so. He might have. I
13 just don't recall.

14 Q. That's fine. How about how long
15 that the knee placed on Troy's back?

16 A. I don't recall that either.

17 Q. Did the doctor describe for you why
18 he felt that there were other indications that
19 Troy did not have enough oxygen?

20 A. I don't think he did, but I really
21 can't recall.

22 Q. Now, you indicated that you had told
23 the coroner, Dr. Luckasevic, about what you had
24 observed about the struggle that Troy had. Do
25 you know if, first of all, your son, Tim, spoke

1 B. Wingard - by Mr. Donahoe
2 to the coroner and related to the coroner what
3 Tim had seen?

4 A. I don't think he did. I'm not real
5 sure.

6 Q. What about Kimberly?

7 A. No. She never talked to the
8 coroner.

9 Q. Do you know if any other persons
10 besides yourself spoke to the coroner and
11 advised the coroner what they had seen about
12 this struggle?

13 A. No, I don't know.

14 Q. That's fine. I need a few items of
15 background information about Troy. Did he have
16 hobbies?

17 A. Yeah. He liked collecting anything
18 with Broncos.

19 Q. Okay. How about hunting?

20 A. No. He didn't like hunting. He
21 didn't like killing animals.

22 Q. Did he fish?

23 A. He did some. He would take Matthew
24 fishing.

25 Q. Did he own any firearms?

1 B. Wingard - by Mr. Donahoe

2 A. No.

3 Q. Were there firearms -- this occurred
4 in Kimberly's house; correct?

5 A. Yes.

6 Q. Do you know if there were any guns
7 in Kimberly's house?

8 A. Definitely not. No guns.

9 Q. Do you know whether or not Troy had
10 a bank that he went to?

11 A. A bank?

12 Q. Yes. Where he kept his accounts or
13 his money.

14 A. First Commonwealth I believe, but
15 I'm not positive.

16 Q. Did they have a branch in this area
17 where the incident happened?

18 A. Yes. In Punxsutawney.

19 Q. Did he have an ATM card, for
20 example, that he used?

21 A. I think he did, but I'm not positive.

22 Q. Did Troy have a car?

23 A. Yes, he did.

24 Q. What kind of car did he have?

25 A. It was a Chevy.

1 B. Wingard - by Mr. Donahoe

2 Q. Any idea what year?

3 A. It was probably in the, like, 1997
4 or something. I'm not sure.

5 Q. When Troy died and you became the
6 administratrix of the estate, I take it he did
7 not have a Will; correct?

8 A. That's correct.

9 Q. So you became the administratrix of
10 the estate?

11 A. Yes.

12 Q. Where did you take out the estate?
13 What county? Do you recall?

14 A. Jefferson.

15 Q. Very good. When you took out the
16 estate, did you fill out something called a
17 Petition for Probate, if you recall? If you
18 don't, that's okay.

19 A. I don't remember. Dennis had the
20 papers and talked to me, and I talked to him
21 and signed some papers.

22 Q. Did you actually go to the
23 courthouse and swear before the Register of
24 Wills?

25 A. Yes.

1 B. Wingard - by Mr. Donahoe

2 Q. You went there with Dennis Boyle?

3 A. Yes.

4 Q. So if there's an inventory of Troy's
5 property and the Petition, it would be in the
6 Jefferson County Courthouse or the attorneys
7 would have it?

8 A. Yes.

9 Q. You did not know or did you say that
10 Troy had not been awarded Social Security
11 Disability when this incident had happened?

12 A. He never filed for it.

13 Q. He did not file at all?

14 A. Right. If he did, it was at the
15 very early stages of filing. But I don't
16 remember doing it for him. I remember talking
17 to him about it.

18 Q. You had mentioned his doctors, and
19 you have given us authorizations for his
20 doctors. But where would he go for primary
21 treatment of his Crohn's disease?

22 A. He went to Dr. Martin, and then he
23 went to a doctor in Indiana.

24 Q. Where is Dr. Martin?

25 A. In Punxsutawney.

1 B. Wingard - by Mr. Donahoe

2 Q. Who is the doctor in Indiana?

3 A. I don't know. It was one of the
4 two doctors that I gave -- the other two doctors.
5 One of them. Now, one of them is going to say
6 it was a psychiatrist or something from the
7 DuBois branch. That wasn't the doctor he seen,
8 it was the other one. But they are both kind
9 of foreign names.

10 Q. Do you recall what prescription
11 medication he was taking, Troy was taking?

12 A. I don't. I have it written down at
13 home.

14 Q. Do you know if his Crohn's disease
15 was controlled with his medication?

16 A. It wasn't working.

17 Q. Did he have an appointment scheduled
18 for a different medication?

19 A. No. He was looking for a different
20 doctor. We were.

21 Q. Had you been recommended any
22 experts, anybody who specializes in that area?

23 A. The one that we seen in Indiana did.

24 Q. But he did not prescribe a
25 medication that controlled Troy's condition?

1 B. Wingard - by Mr. Donahoe

2 A. He prescribed medicine. He said it
3 should be working, but Troy didn't make it back
4 to do any follow-ups with him.

5 Q. Did Troy belong to any clubs or
6 groups or associations?

7 A. No.

8 Q. Other than Tim and Matt, did he have
9 any other close friends that he socialized with
10 regularly?

11 A. In the Punxsutawney area?

12 Q. Yes.

13 A. My nephew, Donald Dies.

14 Q. What's Donald's last name?

15 A. Dies, D-I-E-S.

16 Q. Then where else did he have close
17 friends? In the Scranton area?

18 A. Yes.

19 Q. How long had he been out of Scranton
20 before this incident?

21 A. He lived there for about ten years.

22 Q. How long had he been gone from there?

23 A. 2006 he moved; so --

24 Q. Four years approximately?

25 A. Right. Yeah.

1 B. Wingard - by Mr. Donahoe

2 Q. So during the four years that he was
3 in Punxsutawney, there wasn't a group of social
4 friends that he became close with?

5 A. No.

6 Q. Was there any location where he
7 would go? Did he go to a bar, for example, or
8 a club or anything like that?

9 A. No. He never went to bars. He just
10 mostly stayed at home. He didn't like
11 traveling anywhere. He just wanted to know --
12 if he did, he wanted to know where he could go
13 to the bathroom at if he had to stop.

14 Q. Between '06 and '08 he was employed
15 in the Punxsutawney area?

16 A. Yes.

17 Q. At the Stello's warehouse?

18 A. Right.

19 Q. Is it your testimony that he simply
20 quit there because of the problems that he had
21 with Crohn's disease?

22 A. Yes.

23 Q. He got along well there otherwise as
24 an employee?

25 A. Yes. I think he even had some

1 B. Wingard - by Mr. Donahoe

2 friends, but I don't know their names.

3 Q. Fine. Since this incident occurred
4 and after the death of your son, Troy, have you
5 spoken to anybody from the Pennsylvania State
6 Police about the incident?

7 A. Yes. His name was Neal. I don't
8 know his last name.

9 Q. Did he call you?

10 A. I think so, yeah. I didn't call him
11 at all ever. He called. And I didn't even --
12 I didn't even talk to him I don't think. I
13 think Tim talked to him at the time.

14 Q. Was that that evening when you said
15 that maybe we need a lawyer?

16 A. No. That was in the hospital.

17 Q. How much longer after that did you
18 speak to this other person from the State
19 Police named Neal?

20 A. Maybe two weeks approximately. I'm
21 not real sure.

22 Q. Do you know, did Neal identify the
23 purpose for his call?

24 A. No, I don't recall. Because I don't
25 think I ever talked to him.

1 B. Wingard - by Mr. Donahoe

2 Q. Do you know if his name is Captain
3 Scott A. Neal?

4 A. Maybe that was it, yes.

5 Q. Did you speak to Captain Neal?

6 A. I can't recall if I answered the
7 phone and then Tim got on. I just can't recall.

8 Q. Do you remember anything that
9 Captain Neal may have said to you?

10 A. No. I just know he called the
11 house, but I can't remember if I had a
12 conversation with him or not.

13 Q. That's fine. Do you know what Tim
14 may have heard or said?

15 A. I know Tim asked him what the police
16 officers' names were. I know that he asked him
17 if there was any disciplinary action taken.

18 Q. What answers did Tim receive?

19 A. He said that he couldn't give the
20 names of the officers. And I do remember some
21 of the conversation. I did talk to him.

22 Q. Okay. Tell us what you recall.

23 A. I recall I'm the one that asked him
24 if there was any disciplinary actions. He
25 said, no, he didn't -- they didn't shoot

1 B. Wingard - by Mr. Donahoe

2 anybody, so there was no disciplinary actions.

3 Q. Anything else you recall Captain
4 Neal saying?

5 A. No. I just remember his tone was
6 kind of nasty.

7 Q. Why do you say that?

8 A. Because the way he said it. He was,
9 like, arrogant. No, they didn't kill anybody,
10 so why should they be taken off of their
11 duties.

12 Q. Anything else you can recall Captain
13 Neal saying to him or to you?

14 A. I don't recall anything else.

15 Q. Have you since the date of the
16 incident spoken to anybody from the paramedics
17 or the emergency medical services, the
18 ambulance crew?

19 A. No.

20 Q. Have you spoken, other than to
21 Dr. Luckasevic, to any other physicians about
22 this incident?

23 A. Well, whenever I was in the
24 Pittsburgh hospital, I mean, not in it, but, I
25 mean, I was there for whenever they took Troy

1 B. Wingard - by Mr. Donahoe

2 down there, the one doctor came out. I don't
3 know his name. He did come out and talk to me
4 and Tim.

5 He told us that Troy was brain dead,
6 there was nothing they could do. I asked him
7 what caused the brain damage. He said -- how
8 did he put that? Brain damage and brain. He
9 said there was two things, but I can't remember
10 the second one. He said one he will have just
11 it's a brain damage, but it wasn't completely
12 that he would, you know, be dead and stuff. I
13 can't remember exact words he used. But he
14 said that's whenever he had loss of oxygen for
15 a few minutes.

16 He said in Troy's case, he had
17 complete brain damage, and it could have been
18 caused whenever he hit his head on the counter.
19 It also could have been caused from the police
20 putting his knee on there, shutting off the
21 oxygen, but it had to have been more than,
22 like, ten minutes.

23 Q. That his brain was deprived of
24 oxygen?

25 A. Yes.

1 B. Wingard - by Mr. Donahoe

2 Q. That occurred at Allegheny General
3 Hospital?

4 A. Yes.

5 Q. In the evening or the early morning
6 after this incident?

7 A. Right. Yes.

8 Q. Have you spoken to any people -- by
9 the way, I take it was your son laid out at a
10 funeral home?

11 A. Yes.

12 Q. Did you speak to the funeral
13 directors about his condition or what may have
14 occurred to him?

15 A. She asked. Yes, I told her.

16 Q. What did she tell you, if anything?

17 A. She didn't tell me anything related
18 to his death, just explained what was going to
19 happen with the funeral. That's all we talked
20 about.

21 Q. During the course of the incident
22 where Troy was -- where the struggle occurred
23 in Kim's house, since the date of the incident,
24 has Kim related to you what she saw that evening?

25 A. Yes.

1 B. Wingard - by Mr. Donahoe

2 Q. What has she told you?

3 A. Well, she was in the kitchen, so I
4 suppose she couldn't see everything because the
5 loveseat and a few things was in the way.

6 Q. By the way, that's one of the things
7 that I was going to ask you with respect to the
8 drawing that you made. Can you see through an
9 opening in the wall of the kitchen into the
10 living room?

11 A. Yes.

12 Q. On the exhibit that you have, which
13 you have marked as D3, the kitchen is adjacent
14 to the living room where the loveseat is
15 located. Am I correct about that?

16 A. Yes.

17 Q. Is there what would be like an
18 opening in the wall above the loveseat?

19 A. Yes. There's a counter and a window
20 with shutters.

21 Q. Were the shutters open that evening?

22 A. Yes.

23 Q. How big is the area approximately?
24 How high? High wide?

25 A. Right. Approximately it would

1 B. Wingard - by Mr. Donahoe

2 probably be about maybe four feet wide and

3 maybe about three feet high.

4 Q. What portion of that three-by-four foot
5 area is obscured by the shutters when they are
6 open?

7 A. Maybe about four inches on each side.

8 Q. How high up is the opening from
9 floor in the kitchen?

10 A. I don't know that.

11 Q. Would it be approximately your waist
12 level, for example? So that when you stood
13 there, the opening would begin at approximately
14 your waist?

15 A. No. It would be higher than that.
16 Probably like about lower than my shoulders;
17 maybe about elbow high.

18 Q. Very good. Is it an opening that's
19 used to allow food to be moved from the kitchen?

20 A. Yes.

21 Q. So it's a service-type opening?

22 A. Yes.

23 Q. Is there a window sill there at the
24 bottom of this opening?

25 A. Yes. Like a shelf. And then on the

1 B. Wingard - by Mr. Donahoe

2 kitchen side there's stools that could be slid
3 underneath.

4 Q. Do the children sometimes eat there?

5 A. Yes.

6 Q. I take it, though, one can't eat
7 from the loveseat side of this?

8 A. Right. No.

9 Q. What is the sill or the bottom of
10 that window made of? Is it wood, marble?

11 A. Wood.

12 Q. Did you indicate that Troy struck
13 his forehead on that wood?

14 A. Yes.

15 Q. Did Troy bleed when that occurred?

16 A. No.

17 Q. Did he mark or break the wood?

18 A. Yes.

19 Q. What was the nature of the damage to
20 the wood that occurred from his head striking it?

21 A. Probably about a piece maybe about
22 four inches long; maybe about an inch wide;
23 and, you know, like an inch thick, an inch wide.

24 Q. But that did not cause a cut to his
25 forehead or a bruise?

1 B. Wingard - by Mr. Donahoe

2 A. No. But as soon as he got up, you
3 could see a deep mark in his forehead, like an
4 impression.

5 Q. Was it four inches wide? Long I
6 mean -- sorry -- not wide.

7 A. I'm not sure. I can't recall, but I
8 know that it wasn't there before.

9 Q. I'm talking about its location in
10 length. Would it be approximately the length
11 of the area that was knocked out of the sill?

12 A. Approximately.

13 Q. It was in the forehead, so above the
14 eyebrows but below his hairline?

15 A. Yes.

16 Q. That's fine. I'll get back to that.
17 I won't be that long. It's not like I'm going
18 to make a career out of this.

19 So getting back to you were
20 explaining to me what Kim had observed. Is it
21 your testimony, then, that throughout the
22 incident Kim was located in the kitchen?

23 A. Yes.

24 Q. How close to the opening would she
25 have been in the wall?

1 B. Wingard - by Mr. Donahoe

2 A. Probably about two feet.

3 Q. There's no other way that she would
4 have seen into the living room other than
5 through that opening; is that correct?

6 A. If she would have walked in the
7 dining room and then came around into the
8 living room, but I can't recall her doing that.

9 Q. Is the dining room on the other side
10 of what you have marked as the hall?

11 A. No. It's on this (indicating) side
12 of the kitchen.

13 Q. I see. It's on the other side of
14 the area where the couch was located?

15 A. Yes.

16 Q. I see. What about Tim, has he ever --
17 then tell me what did Kim tell you that she
18 saw?

19 A. She seen Troy took a swing. They
20 both tackled him. They both held him down,
21 shackled him. She seen the one police officer,
22 after they dragged him into the middle of the
23 floor, she would be able to see everything a
24 lot better. She seen the one officer with his
25 knee on his neck and throat and the other one

1 B. Wingard - by Mr. Donahoe
2 with his knee in the back and the other officer
3 probably standing like I said.

4 Me and her disagreed on one thing,
5 and that was whenever the paramedics asked --
6 no -- yeah -- the paramedics asked the officers
7 to remove the handcuffs, she said that she
8 doesn't believe they did. But me and Tim both
9 talked about it later, and we both said yeah.

10 Q. Who removed the handcuffs?

11 A. One of the officers. I don't recall
12 which one.

13 Q. When they removed the handcuffs, if
14 you can think back to that time, do you recall
15 whether Troy was handcuffed behind his back at
16 that point or in front of himself?

17 A. Behind his back the whole time.

18 Q. When they removed the cuffs at that
19 point, had Troy lost consciousness, to your
20 observation?

21 A. He was already unconscious.

22 Q. They then did not rehandcuff him in
23 the front, or did they?

24 A. No.

25 Q. They did not?

1 B. Wingard - by Mr. Donahoe

2 A. No. That's correct, they did not.

3 Q. Did you discuss with Kim what her
4 thoughts were about how the incident was
5 handled and whether she thought anything was
6 done improperly or recklessly or whatever?

7 A. Right. Yeah. She was upset about
8 it. She was very mad at the State Police. She
9 believed that, like I believed, it was a big
10 role in their part where they didn't even try
11 to bring him back or anything.

12 Q. Did she know either of the Troopers?

13 A. No. Except that she heard about
14 Batt --

15 Q. Battestilli?

16 A. Yes. He has a reputation. She
17 heard of him from her work.

18 Q. Where does she work?

19 A. Stello's. And also she heard from
20 the furnace man, talking to him and that. They
21 heard rumors and stuff in town.

22 Q. In Punxsutawney?

23 A. Yes.

24 Q. What reputation did she hear that
25 Trooper Battestilli had?

1 B. Wingard - by Mr. Donahoe

2 A. That he was a dirty police officer.

3 Q. Could you be more specific? When
4 you say dirty, I don't know whether you mean
5 corrupt, took bribes, beat up people, whatever.

6 A. Well, I'm not really sure. But I do
7 know an incident that did happen, and it was in
8 the paper of what happened, what he did. So I
9 don't know.

10 Q. Before I get to that, I will ask you
11 about that, but Kim had related to you that she
12 had heard at work, first, that Trooper
13 Battestilli's reputation was that of being --

14 A. That he got in trouble before, put
15 it that way. She didn't say what. He wasn't --
16 he didn't act really professional and stuff. I
17 guess he didn't follow the rules and stuff.

18 Q. Can you be more specific as to how
19 he did not act professionally or failed to
20 follow the rules?

21 A. The only way I can is if I explain
22 about the newspaper article.

23 Q. Is there anything other than the
24 newspaper article incident that you're aware of
25 that would reflect on him?

1 B. Wingard - by Mr. Donahoe

2 A. No.

3 Q. What about the heater, the service
4 man who was in air conditioning?

5 A. Yeah. The heater man. He was there
6 for the furnace, and he's the one that really
7 told Kim mostly. Kim didn't explain
8 everything, but I guess that guy told Kim quite
9 a few stories about Battestilli, or whatever
10 his name is.

11 Q. What stories, if you know of any of
12 the particulars, did Kim learn from the heater
13 guy?

14 A. I don't recall what she said. I
15 just know of two that was in the paper.

16 Q. Can you describe those two incidents?

17 A. Yeah. The one -- you know, I can't
18 really remember about it. Let's forget about
19 that one. The first one that I seen in the
20 paper, I read about it, is where a young woman
21 owned a tavern in Austin, in Punxsutawney, and
22 she left the residence about 2:00 in the
23 morning, and he started following her home.
24 Maybe he assumed that she was drinking or
25 something. He probably didn't even know who it

1 B. Wingard - by Mr. Donahoe

2 was.

3 He did put on his lights. It was a
4 back road, and it said in the paper that there
5 was no place to pull off, so she kept on going.
6 She did blink her lights so that he would know
7 she understood that he wanted her to pull over.

8 I guess he didn't wait. He did the
9 maneuver where he tapped the back of the Jeep,
10 whatever she was driving -- I think it was a
11 Jeep -- and it rolled over. I don't think she
12 was hurt bad, but that just came.

13 Q. Was that after this incident with
14 your son?

15 A. No. This was years ago.

16 Q. I see. Anything else in particular
17 that you learned about Trooper Battestilli?

18 A. No.

19 Q. Now, the other Trooper's name as we
20 indicated was Trooper Johnson.

21 A. Right.

22 Q. Have you heard anything about
23 Trooper Johnson?

24 A. No. Nothing.

25 Q. Tim also was present on the evening

1 B. Wingard - by Mr. Donahoe

2 when this occurred in the house, and you had
3 indicated that as far as you know, he was
4 located --

5 A. Behind the couch (indicating).

6 Q. Behind the couch. Was he in the
7 dining room?

8 A. There was like a dining room
9 (indicating), couch (indicating). In the
10 beginning when the police came in, he was
11 behind the police officers. And then I think
12 he went through the kitchen and went behind the
13 couch.

14 Q. Is the dining room separated from
15 the living room from by walls or just by this
16 couch?

17 A. Just by the couch.

18 Q. I see. He was in the dining area
19 from the time that he came into the area and
20 was there until the end of this incident?

21 A. Yes.

22 Q. What did he say that he observed
23 during the incident in your discussions with
24 him about it?

25 A. We talked about it. We both seen

1 B. Wingard - by Mr. Donahoe
2 about the same thing, where Troy did take a
3 swing, the officers jumped him he said. Those
4 were his words, the officer jumped right on
5 him. He even said that what he thought was
6 they were just waiting for Troy to do something
7 and then they instantly just jumped on him. He
8 did tell me that.

9 He says he doesn't believe they
10 should have held him down that long, as long as
11 they did, his knee in the throat and stuff, his
12 neck.

13 Q. Did he relate to you that he saw any
14 of the particular types of means by which they
15 held him down? In other words, did he relate
16 to you that he saw them with their knee in his
17 neck or on his neck?

18 A. Oh, yes.

19 Q. What did he say about -- by the way,
20 it was Trooper Battestilli that you had
21 indicated was the person who had his knee by
22 Troy's neck and back?

23 A. Yes.

24 Q. What, if anything, did Tim say that
25 he observed about Trooper Battestilli's

1 B. Wingard - by Mr. Donahoe

2 actions?

3 A. Well, he said the same thing. He
4 was more against the Troopers the way they were
5 talking to Troy, in their tone of voice. He
6 didn't like that at all. He said it was
7 inappropriate.

8 Q. Were these the discussions that the
9 Troopers had with Troy prior to the time that
10 he took that swing at Trooper Battestilli?

11 A. Uh-huh.

12 Q. Correct?

13 A. Yes.

14 Q. You have described that they asked
15 him a number of times "now what"?

16 A. Correct.

17 Q. Quote, now what, Troy?

18 A. They would use his name and change
19 the wording around: Now what, Troy? What are
20 you going to do now, Troy?

21 Q. Do you recall anything else that
22 they said to Troy?

23 A. Just whenever they talked, they said
24 what's going on, Troy?

25 Q. How long did the discussions back

1 B. Wingard - by Mr. Donahoe

2 and forth with Troy last, if you can estimate,
3 between the time they first entered the living
4 room area and the time that Troy swung at
5 Trooper Battestilli?

6 A. I can't recall. I don't know or I
7 just don't remember.

8 Q. Fine. Was it Trooper Battestilli
9 that was the one speaking to Troy or was it
10 both of the Troopers?

11 A. No. Just Battestilli.

12 Q. It was your testimony and perhaps
13 also that of Tim's that it was the tone of the
14 questions that Trooper Battestilli was asking
15 that caused Troy to become agitated enough to
16 swing at him?

17 A. Yes. It was what was that word?
18 Scar --

19 Q. Sarcastic?

20 A. Yes.

21 Q. I see. Now, had you ever known in
22 the past that Troy would hit somebody for being
23 sarcastic to him?

24 A. No.

25 Q. Had he ever gotten into fights with

1 B. Wingard - by Mr. Donahoe

2 people because he didn't like what they said?

3 A. He got in one incident, and only one
4 incident I know of. He was in high school. He
5 was at a Christmas basketball tournament, and
6 he was standing around with a bunch of the boys
7 on the team. They were outside this fast food
8 place, and they were laughing and talking.
9 Another member of another team on the Christmas
10 tournament, a different team, walked by while
11 they were laughing.

12 Well, Troy was the biggest one, and
13 Troy said he figured that's why he come up to
14 him. He grabbed him real quick and head-butted
15 him right in the face, so he punched the kid.
16 And he goes to me, Mom, I didn't start it, and
17 we wasn't laughing about the kid at all. They
18 both got removed from the tournament.

19 But that's the only incident I ever
20 heard of Troy getting in a fight, and he didn't
21 even start it.

22 Q. In that incident, he was physically
23 assaulted. Here there was somebody whose tone
24 of voice he didn't particularly care for.

25 A. Right.

1 B. Wingard - by Mr. Donahoe

2 Q. So the question I have is why on
3 this occasion would he perceive someone not to
4 be talking in a way he wanted them to talk to
5 him he decided to punch them? Do you have any
6 idea?

7 A. I do not.

8 Q. Did you and Tim and Kim discuss that
9 at all with anybody?

10 A. No.

11 Q. Then the punch occurred, and the
12 two Troopers came in contact with Troy, and he
13 wound up, as you testified, up on the loveseat,
14 and he wound up with his face to the right into
15 the side of the loveseat?

16 A. Whenever they tackled him, he ended
17 up face down.

18 Q. On the cushion, the seat part or the
19 side part? The back of the loveseat?

20 A. His face was on the side.

21 Q. The back of it?

22 A. Yeah. His arm was partways on the
23 back, his feet was on the floor.

24 Q. We don't have the loveseat anymore I
25 take it; correct?

1 B. Wingard - by Mr. Donahoe

2 A. No.

3 Q. Can you just describe it a little
4 bit. I know it's a long time ago. Just
5 ball parking it.

6 A. It was just a regular couch like,
7 only smaller size, upholstered. It was kind of
8 worn out from having four kids jumping on it
9 and stuff.

10 Q. Sure.

11 A. That's all I know.

12 Q. He lands initially with his face on
13 the loveseat, feet on the ground, and then you
14 had indicated that he had his hands in front of
15 him?

16 A. Right. His knees was actually on
17 the ground too, on the floor.

18 Q. Very good. So his knees are on the
19 floor. Is it Trooper Battestilli that's up by
20 his head portion of the loveseat?

21 A. Right.

22 Q. Was his head towards the TV area, or
23 was it towards the -- in other words, there's
24 (indicating) the couch?

25 A. Right.

1 B. Wingard - by Mr. Donahoe

2 Q. And then there's (indicating) the
3 TV?

4 A. Troy's face was smashed into the
5 couch.

6 Q. Was his head up by the TV and his
7 feet in the back pointed towards the couch?

8 A. No. His head was, like, up towards
9 this (indicating) shelf at the top of the back
10 of the couch.

11 Q. Sure.

12 A. His face was smashed right into it.

13 Q. Was he just kneeling directly --

14 A. Yes.

15 Q. I see. So he wasn't pointed
16 parallel to the kitchen?

17 A. No.

18 Q. He was perpendicular to the kitchen?

19 A. Right.

20 Q. At that point, then, his knees are
21 on the ground, his feet are out, where was --
22 I'll tell you his name is Johnson, and he's not
23 Battestilli, so that would be an easy way for
24 you to understand -- Trooper Johnson at that
25 time?

1 B. Wingard - by Mr. Donahoe

2 A. He was more like -- he was back
3 some. He left Battestilli do everything, and
4 he was, like, more in the background.

5 Q. Was he standing, Trooper Johnson?

6 A. Yes.

7 Q. He was in the area that's closer to
8 where the window and door are, away from the
9 loveseat?

10 A. Once they tackled him, they both
11 tackled him, got him down. Whenever Troy's
12 face was shoved into the loveseat, Battestilli
13 had his arm behind his neck, and I don't know
14 where his legs was at the time. The other one,
15 Johnson, was trying to pull Troy's one arm out
16 to handcuff him.

17 Q. Do you know if it was his left or
18 his right arm?

19 A. It would have been his left arm that
20 Johnson would have been working on -- no, his
21 right. I'm sorry.

22 Q. That's okay. And Battestilli had
23 his right arm on him trying to get his left arm
24 out?

25 A. Right.

1 B. Wingard - by Mr. Donahoe

2 Q. Did either one of them have their
3 taser drawn from his holster at that point?

4 A. No.

5 Q. Did Trooper Johnson ever remove his
6 taser from the holster?

7 A. No.

8 Q. I see. No other implements were
9 drawn I take it that evening? In other words,
10 I don't know what all was on the belts of
11 Troopers Johnson and Battestilli, but did you
12 see them take out, other than handcuffs at some
13 point, a baton or a billy club or an asp or
14 pepper spray?

15 A. No.

16 Q. And not a pistol?

17 A. No.

18 Q. Then did you see them remove the
19 handcuffs, or did they have their handcuffs in
20 their hand when they entered the house?

21 A. No. They didn't have them in their
22 hand. I don't recall seeing them pulling the
23 handcuffs out.

24 Q. Do you know whose handcuffs were
25 used to secure Troy's hands?

1 B. Wingard - by Mr. Donahoe

2 A. No. I don't know that.

3 Q. That's fine. During the initial
4 taking Troy onto that loveseat after the swing
5 occurred, do you recall anything that the
6 Troopers then said to Troy?

7 A. Repeat that.

8 Q. After Troy was knocked to his knees,
9 or brought down on his knees, and he had his
10 face into the loveseat, do you recall anything
11 the Troopers then said?

12 A. They didn't talk after they tackled
13 him.

14 Q. I see.

15 A. They didn't even warn him about the
16 taser or nothing. The one time somebody said,
17 Troy, quit resisting. That was the only -- and
18 then the next thing I heard was go out and get
19 the shackles.

20 Q. From the time that Troy was tackled,
21 as you say, to the time that you heard them,
22 one of the Troopers, and I take it -- who went
23 out for the shackles?

24 A. Johnson.

25 Q. Okay. So it would have been

1 B. Wingard - by Mr. Donahoe

2 Battestilli who said go out and get the
3 shackles?

4 A. Exactly right.

5 Q. From the time that Troy was tackled
6 to the time when Trooper Battestilli said to
7 Trooper Johnson go and get the shackles, I know
8 it's a lot going on, do you have any idea how
9 much time elapsed?

10 A. No. Not at all. Sorry.

11 Q. During that time, up until the time
12 that Trooper Johnson was told to go to get the
13 shackles, do you know where you were standing?
14 Was it always within the living room area?

15 A. Yes.

16 Q. Then after Trooper Johnson left to
17 get the shackles, did he come back with them?

18 A. Yes.

19 Q. Do you know how long Trooper Johnson
20 was gone?

21 A. No.

22 Q. Did you overhear him say anything
23 when he was outside?

24 A. No.

25 Q. When was it that you then left the

1 B. Wingard - by Mr. Donahoe

2 living room area and went into the kitchen?

3 A. It was after they dragged him into
4 the middle of the floor. And that's when Tim
5 asked him why he had to still stay on him with
6 his knee on his neck and throat area and his
7 back. He kept on saying, why are you holding
8 him down? Battestilli said that when he's
9 coming around, he will be resisting again.

10 Then I walked around, because I
11 looked up at Kim, and I walked around, and me
12 and Kim stood in the kitchen.

13 Q. Did Troy have the shackles placed on
14 his legs by that time?

15 A. Oh, yes.

16 Q. Did you go into the kitchen via the
17 dining room area?

18 A. Yes.

19 Q. I see. Again, any idea how long it
20 took from the time that Trooper Johnson came
21 back into the living room with the shackles
22 until the time that they actually applied them
23 and you went into the kitchen?

24 A. I don't recall that. I don't recall
25 the time at all.

1 B. Wingard - by Mr. Donahoe

2 Q. I'm going through my notes because
3 they are not all in order.

4 A. Right.

5 Q. The one thing I was going to ask you
6 about, as you had indicated in your testimony,
7 when Troy initially swung, I take it he did
8 that with his right hand at Trooper Battestilli;
9 is that correct?

10 A. Yes.

11 Q. Trooper Battestilli, as you recall,
12 did not block this punch?

13 A. No, he did not.

14 Q. Sometimes when people throw a punch,
15 they fall down if it doesn't connect. Did the
16 punch connect with anything?

17 A. No.

18 Q. Did Troy remain on his feet?

19 A. Yes. But he kind of like swung
20 around, and that's whenever they tackled him.
21 He was half around, and I think that's why he
22 ended up face down.

23 Q. I see. I'm going to go back to the
24 time immediately when they tackled Troy and he
25 was on the loveseat face down. His hands were

1 B. Wingard - by Mr. Donahoe

2 in front of him --

3 A. Yes.

4 Q. -- in an effort to avoid being
5 handcuffed?

6 A. Yes. His hands were right in the
7 front of his stomach.

8 Q. It being a loveseat, I guess it
9 looks kind of like a small couch?

10 A. Yes.

11 Q. If your face is on the side of the
12 cushion where a person sits, the arms would be
13 in front of the person who is trying to keep
14 them away from a police officer, and they would
15 not be on the couch then I take it? They would
16 be between his chest and the side of the
17 loveseat?

18 A. First of all, Troy's face was not in
19 the cushion where you said. It was on the back
20 part of the couch.

21 Q. Okay.

22 A. Half his body was, like, on the
23 couch, and his legs and knee and feet was down
24 on the floor.

25 Q. I see.

1 B. Wingard - by Mr. Donahoe

2 A. Officer Battestilli was on this
3 (indicating) side of him.

4 Q. When you say "this side," you mean
5 the side closest to the TV?

6 A. Yes.

7 Q. In the hall?

8 A. Yes.

9 Q. Where were Troy's arms? Were they
10 on the couch, or were they in front of the
11 couch -- I mean, the loveseat? In other words,
12 he had them in front of him? Are they on the
13 loveseat portion of the piece of furniture, or
14 are they on the front portion of the piece of
15 furniture? Are they against the front portion?

16 In other words, if this table in
17 front of me is the loveseat, and the front of
18 the table would be underneath the table. His
19 body would be kind of angled on it. Where were
20 his arms? Were they in front of him here
21 (indicating) or below him on the couch seat?
22 Were they beneath him on the loveseat cushion?

23 A. Yes.

24 Q. I see. Then it was this effort to
25 try to remove those arms that the Troopers were

1 B. Wingard - by Mr. Donahoe
2 engaged in?

3 A. Yeah. They were trying to force his
4 wrists out, his arms out.

5 Q. Eventually there was an application
6 of the taser in its barb mode we have called
7 it, and the drive stun mode is the other mode,
8 but the barbs is when the two prongs are shot
9 into the person.

10 A. Right.

11 Q. Was the initial contact with Troy by
12 way of the two-barb mode?

13 A. Yes.

14 Q. The initial contact with Troy, was
15 he still in a struggle to prevent his arms from
16 being handcuffed? At that point when those
17 barbs went into him, was he trying to not get
18 handcuffed?

19 A. Whenever they were trying to reach
20 for his hand, his arms, then he would resist.
21 At the time whenever -- Battestilli had his arm
22 I'm thinking it was behind his head. He wasn't
23 struggling too much because his hands was
24 there. He had no reason to keep on struggling.
25 His hands was free and in front of him.

1 B. Wingard - by Mr. Donahoe

2 That's whenever Battestilli was
3 kneeling and he had his arm on the back of his
4 neck and getting his taser out and then trying
5 to shoot him, but they couldn't get through the
6 clothing.

7 Q. I see. Now, at this point, was
8 Johnson standing, the other Trooper, the older
9 Trooper?

10 A. I can't remember if he was on the
11 loveseat, you know, trying get Troy's arm out
12 or not. It's just like he's away or something.
13 I just don't picture him.

14 Q. They had a difficult time with
15 applying the taser to Troy, so Trooper Johnson
16 lifted up his shirt?

17 A. He slid it up.

18 Q. He slid it up and shot the taser?

19 A. Yes.

20 Q. Did they try to discharge that taser
21 into Troy's clothing prior to that?

22 A. (Witness nodding.)

23 Q. Did you see the barbs land on his
24 clothing?

25 A. No.

1 B. Wingard - by Mr. Donahoe

2 Q. How is it that you know they
3 discharged it if it shoots out two metal barbs?

4 A. Because I'm pretty sure he said
5 something about -- I just seen him pushing it
6 against his clothes.

7 Q. Again, this is Trooper Battestilli?

8 A. Yeah. And then he goes, pull up his
9 shirt. So I'm just thinking then that it
10 didn't work. But he's pushing, trying to get
11 it through his clothes.

12 Q. But you didn't see any wires come out?

13 A. No. I did -- whenever they pulled
14 up his shirt I did see that then.

15 Q. Did you hear any electric
16 crackling --

17 A. Yes.

18 Q. -- prior to the time they pulled up
19 his shirt?

20 A. That I can't recall. I don't know
21 for sure.

22 Q. But at the time the barbs entered
23 Troy, you heard an electrical crackling-type
24 sound? If you don't, that's fine. I'm just
25 asking.

1 B. Wingard - by Mr. Donahoe

2 A. I just remember hearing it, but I'm
3 not sure where they placed it at. It was just
4 whenever they did it without barbs or with the
5 barbs, I just can't recall.

6 Q. Initially you saw them push their
7 TASER weapon into his shirt?

8 A. Right.

9 Q. And it apparently was not effective,
10 so someone --

11 A. Right.

12 Q. When they applied the taser to his
13 shirt initially, was it the back?

14 A. Yeah, it was his back. In the
15 middle of his back, but to the side.

16 Q. When the actual barbs contacted his
17 skin, it was in the upper right-hand back area
18 or was it the mid-back?

19 A. Mid-back on the side. Exact same
20 place.

21 Q. On his left side or right side?

22 A. His left I'm pretty sure.

23 Q. At that point, did Troy stand up?
24 If you recall.

25 A. I recall him standing up, but I know

1 B. Wingard - by Mr. Donahoe
2 he screamed. So I think he stood up -- he
3 screamed and stood up, and they knocked him
4 down, and then jerked out the barbs, and then
5 he screamed again.

6 (Defense Exhibit No. 4 was
7 marked for identification.)

8 Q. I have your statement in front here.
9 We have marked it as D4. If you go to the
10 third page it says BOYLELIT00016 on the bottom.

11 A. Okay.

12 Q. Well, actually 15 at the very
13 bottom. If you go four lines up from the very
14 bottom, you wrote -- I take it this is you who
15 wrote this; correct?

16 A. Uh-huh.

17 Q. The date of the Affidavit was
18 June 2, 2011, so, like, eight months after the
19 incident. Is that when you prepared this
20 statement?

21 A. Well, I know that it might have been
22 a little bit before that, but I knew that they
23 were going to need it, but I just didn't know
24 when they was going to come out.

25 Q. It's typed. Did you type it?

1 B. Wingard - by Mr. Donahoe

2 A. Is this the one that was certified?

3 Q. Yes. In the very back. There's a
4 notary from Jefferson. The notary's name is
5 Jeanette Ruth Bish. She's down in Punxsutawney.

6 A. No. I didn't type this.

7 Q. Do you know who did type it?

8 A. No.

9 Q. You signed it; correct?

10 A. Yes. I read it over, and then I
11 signed it.

12 Q. Did you dictate it, or did you give
13 a written statement that was reduced to typing,
14 or do you know how it became this?

15 A. I e-mailed my statement.

16 Q. I see. And then it was reduced to a
17 written statement?

18 A. Yes.

19 Q. You typed out the e-mailed statement?

20 A. Yes.

21 Q. Well, I guess in this modern day and
22 age one of the things that we ask for is the
23 metadata they call it. So the question, first
24 of all I guess, do you still have a copy of the
25 e-mail that you sent? If you know. Here's

1 B. Wingard - by Mr. Donahoe

2 what I'm going to say, would you go back to
3 your computer -- do you still have the same
4 computer?

5 A. Yes.

6 Q. Take a look to see if you have kept
7 the copy of the e-mail you sent and preserve it.

8 A. Right. I could check.

9 Q. Great. Thank you. Let me go to the
10 one that was typed out. If we go to the bottom
11 of the second page, which is 15, do you see
12 that? Four lines up you write, "the younger
13 cop said, 'well, Troy what's next'? Troy said
14 'I'll show ya.'" Do you remember that?

15 A. Uh-huh.

16 Q. Then you wrote, and he took a step
17 toward them and took a swing at one of the cops
18 but missed?

19 A. Right.

20 Q. "The cop took a step back and then
21 they both tackled Troy onto one of the
22 two couches." The one you're talking about is
23 the loveseat?

24 A. Yes.

25 Q. Troy hit his head really hard on the

1 B. Wingard - by Mr. Donahoe

2 counter that was above the couch and that
3 separates the kitchen and living room.

4 A. Right.

5 Q. You heard a loud thump, and Troy
6 yelled ow. Both cops, each had one of Troy's
7 arms and were trying to twist them behind
8 Troy's back.

9 A. Right.

10 Q. "Troy was face down with his face
11 smashed into the back of the couch. The cop on
12 the left put his knee into the back of Troy's
13 neck to hold him down." Do you recall that
14 occurring?

15 A. Yes.

16 Q. "Troy was still struggling so the
17 same cop pulled out his taser gun and tried to
18 tase Troy through his clothes (he tried three
19 or four times) but it didn't work so he told
20 the other cop to pull up Troy's shirt and then
21 he tased Troy on his bare back (left side about
22 in the middle.)"

23 A. Right.

24 Q. That's Battestilli who tased him?

25 A. Yes.

1 B. Wingard - by Mr. Donahoe

2 Q. "Troy was half-standing & then when
3 he was tased" -- that's what I'm getting to.
4 So Troy was half standing. Did the tasering
5 make Troy stand up, or did they raise him up?
6 Do you know how that occurred, that he went
7 from having his knees on the ground to half
8 standing? Or when you say half standing, do
9 you mean knees on the ground?

10 A. No. He was half standing with his
11 feet.

12 Q. I see.

13 A. I just can't really exactly recall --

14 Q. That's fine.

15 A. -- what happened. I know he ended
16 up screaming.

17 Q. You wrote and he fell back down on
18 the couch.

19 A. Yeah. He fell back down on the
20 couch and then, like, kind of fell down onto
21 the floor then.

22 Q. You said, "I yelled to Troy to stop
23 resisting and to just let them cuff him."

24 A. Uh-huh.

25 Q. Did Troy respond when you told him

1 B. Wingard - by Mr. Donahoe

2 that?

3 A. No.

4 Q. The same cop put his knee, that's
5 Battestilli, back onto Troy's neck; correct?

6 A. Yes.

7 Q. "This time Troy had his head turned
8 to the right and the cop's knee was on the side
9 of Troy's neck into his throat area."

10 A. Right.

11 Q. So Troy's back on the couch, and was
12 he kneeling at this point again, Troy?

13 A. He was laying flat on the couch this
14 time.

15 Q. This time Battestilli put a knee in
16 the side of Troy's neck in the throat area?

17 A. Yes.

18 Q. Then the cop, again Battestilli I
19 take it; correct?

20 A. Uh-huh.

21 Q. "Pulled out the wires from the taser
22 gun and then started pulling them out of Troy's
23 back."

24 A. Right.

25 Q. Did he keep his knee on Troy's neck

1 B. Wingard - by Mr. Donahoe

2 while he did this?

3 A. I think he did for the purpose that
4 Troy never got back up. So I am assuming that
5 he did, but I can't really recall.

6 Q. When he pulled these taser wires out
7 of Troy's back, Troy screamed again. It says,
8 and he started struggling again. So the cop
9 jerked the wires out of Troy's back and then
10 pulled Troy's left arm up behind his back and
11 cuffed that arm.

12 A. Right.

13 Q. Was that the first time a cuff got
14 onto Troy?

15 A. Yes.

16 Q. "While he was pulling on Troy's arm
17 to cuff him -- Troy was able to stand up on one
18 leg and the other leg was bent at the knee and
19 was on the couch."

20 Now, at this point I take it, the
21 Trooper was unable to have his knee on Troy's
22 throat?

23 A. Right, that's correct. I think it
24 was like whenever he pulled his arm back, he
25 was able to sort of like lift him up a little

1 B. Wingard - by Mr. Donahoe

2 bit, and he was able to stand up.

3 Q. When this incident happened to this
4 point, any idea how many seconds or minutes
5 Trooper Battestilli had his knee on Troy's neck?

6 A. I don't.

7 Q. That's fine. I'm just asking. If
8 you don't have any idea, that's fine. Then the
9 same cop, Battestilli, tased Troy again with a
10 prong stun gun. We have called it the drive
11 stun mode?

12 A. Yep.

13 Q. Shocked Troy on the bare neck in the
14 right side below his ear. Is that the course
15 of the events as you recall?

16 A. Yeah. It was more like in the
17 middle of the neck.

18 Q. Again, Troy falls onto the couch and
19 then slid right down onto the floor. Did he go
20 right from couch to floor?

21 A. Yes.

22 Q. As soon as Troy landed on the floor,
23 the same cop, Battestilli, put his left knee
24 back onto Troy's neck and throat area and his
25 right knee in Troy's back, in the middle

1 B. Wingard - by Mr. Donahoe

2 between his shoulder plates.

3 A. Right.

4 Q. I take it that means a little bit
5 below his neck?

6 A. Right. He had all of his weight on
7 him.

8 Q. At this point is Troy laying face up
9 or face down?

10 A. Face down.

11 Q. He has one handcuff on?

12 A. Yes.

13 Q. You said, Troy groaned and said,
14 okay, I'm done, I'm done.

15 A. I'm wrong then about that because
16 before he said that, I know he was handcuffed,
17 both hands. So probably some point before the
18 floor he was handcuffed, and I think it was
19 before the floor where he landed completely.

20 Q. If you look at the bottom of 16 at
21 those last three lines, it looked to me like he
22 had all his weight on Troy, Troy groaned and
23 said, okay, I'm done, I'm done, but the cop who
24 had Troy pinned down did not get off of Troy.
25 He just stayed on him, and they were able to

1 B. Wingard - by Mr. Donahoe

2 put the other cuff on his right arm then.

3 Then do you have a clear
4 recollection or is it kind of not clear at this
5 point?

6 A. Well, I wrote this right after this,
7 so I would say this would be correct. It's
8 just, you know, hard to remember everything.

9 Q. The next page is 17 has Paragraph 8.
10 The next paragraph you said, "the cop that had
11 Troy pinned down told the other cop to go out
12 and get the leg braces."

13 A. Right.

14 Q. Do you know why he said that?

15 A. I don't know.

16 Q. Again, that's Battestilli?

17 A. Troy was handcuffed.

18 Q. Battestilli is telling Johnson?

19 A. Yes.

20 Q. "The cop went out and got them. But
21 before they could put them on, Troy started
22 moving his legs because I believe he couldn't
23 breathe."

24 Any reason why you say that you feel
25 that his leg movement was because he couldn't

1 B. Wingard - by Mr. Donahoe

2 breathe?

3 A. Because he wasn't really kicking
4 like if he was aiming at anybody. I know if it
5 was my position, if I couldn't breathe, I would
6 really be flipping out because I don't -- I
7 would be trying to get up. But I think Troy's
8 legs were just moving so slow and like his feet
9 dragging on the floor, it was like he was
10 trying to get leverage and trying to get up.

11 Q. You said, "but when he started
12 moving again, the cop shocked him a third time
13 with the prong stun gun on the right side in
14 the waist area, toward Troy's back." Is that
15 what you recall actually happening? If you
16 recall. If you don't know at this time, that's
17 fine.

18 A. Right. I don't really recall
19 where -- I mean, like I said, this was written
20 afterwards, so, I mean, it could have been, but
21 I don't recall it right now.

22 Q. Do you recall seeing the police
23 officer, the Trooper, actually at that point,
24 again when Troy's legs were moving, apply the
25 taser to Troy? Do you recall that?

1 B. Wingard - by Mr. Donahoe

2 A. Yes.

3 Q. Now, to do that, he had to take the
4 taser in his hand?

5 A. Right.

6 Q. And apply it somewhere to Troy's
7 back?

8 A. Right.

9 Q. At that point, was he putting any
10 part of his body on Troy's throat or neck or
11 back?

12 A. I can't really recall.

13 Q. That's fine. The next line says,
14 "Troy stopped struggling completely and didn't
15 say anything else and didn't move at all." So
16 that third application, as you indicated, of
17 the drive stun mode, Troy stopped doing anything?

18 A. Yes.

19 Q. Then you say they put the leg braces
20 on. So was the other Trooper, Johnson, who
21 went for the leg braces, standing there when
22 the third drive stun application to Troy's back
23 occurred?

24 A. I really can't recall. I don't know
25 if he was in the house or outside.

1 B. Wingard - by Mr. Donahoe

2 Q. Was it Trooper Johnson who put the
3 leg braces on Troy?

4 A. Yes.

5 Q. Did anyone help him?

6 A. No.

7 Q. Do you know where Tim was at that
8 point?

9 A. Tim was behind the couch. Most of
10 the time he had his hands on the couch. He was
11 standing behind it.

12 Q. Standing in the dining room area?

13 A. Yes.

14 Q. "They" you say. "They put the leg
15 braces on and then the cop got off of Troy, and
16 they both dragged him into the middle of the
17 floor stomach down and face to the right."
18 Again, the same cop, Battestilli, put his left
19 knee back onto Troy's neck and throat area.
20 His right knee was on the middle of Troy's back?

21 A. Right. Correct.

22 Q. Then you went in to help Kim who was
23 crying?

24 A. Yes.

25 Q. "The cop with his knee on Troy said,

1 B. Wingard - by Mr. Donahoe

2 'he's out cold.' " That would be Battestilli?

3 A. Right.

4 Q. Do you know how much time elapsed
5 between the time that you write here that both
6 Troopers dragged Troy into the middle of the
7 floor and then Trooper Battestilli again put
8 his knee on Troy's neck and throat area and
9 right knee in the middle of his back? Do you
10 know how much time elapsed between the time
11 Trooper Battestilli did that and the time that
12 you heard someone, again Battestilli, say he's
13 out cold?

14 A. I don't recall.

15 Q. Were you in the kitchen when he said
16 that, or were you still in the living room?

17 A. I was in the kitchen part.

18 Q. Then you heard Tim say, again from
19 the dining room area, if he's out cold, then
20 why do you need to keep your knee on.
21 Battestilli said, when he comes to, he's going
22 to start resisting again.

23 A. Right.

24 Q. Then Tim asked are you sure he's
25 breathing? It doesn't look like it. Then

1 B. Wingard - by Mr. Donahoe

2 Battestilli removed his knee and turned Troy
3 over onto his right side.

4 A. Uh-huh.

5 Q. You heard a gurgling noise from Troy.

6 A. Yes.

7 Q. Did you see Troy's face at that
8 point?

9 A. Yes.

10 Q. What did that look like? I know
11 it's difficult to recall, but if you can.

12 A. He just had his eyes closed. His
13 face looked kind of grayish.

14 Q. Anything else you recall unusual?

15 A. No.

16 Q. Then the one cop lifted Troy's shirt
17 and said, yes, he's breathing. Was that
18 Johnson or Battestilli?

19 A. I think that was -- that was
20 Johnson.

21 Q. And the other cop, Battestilli,
22 checked for a pulse and said -- it says
23 "pause," but it means "pulse." Am I right
24 about that?

25 A. Yes.

1 B. Wingard - by Mr. Donahoe

2 Q. He said, no, he's not. No pulse.
3 He got up and walked to the back door. So we
4 heard him ask where the ambulance was and that
5 they needed it now. Was he yelling to someone
6 out in the driveway or something?

7 A. No. He was on the phone because he
8 pulled out his cell phone or whatever he was
9 using.

10 Q. Did you know where at that point the
11 ambulance was staged?

12 A. No.

13 Q. Had you understood that an ambulance
14 had previously been called?

15 A. Yes. Tim told me that.

16 Q. Did Tim tell you where they were
17 parked?

18 A. No.

19 Q. Do you know if they were waiting for
20 the okay to come down?

21 A. We didn't know that at all at the
22 time.

23 Q. Then Trooper Battestilli came back
24 inside -- was that Johnson or Battestilli who
25 made that call out there? If you remember. If

1 B. Wingard - by Mr. Donahoe

2 you don't, that's okay.

3 A. I'm not sure. But reading this, it
4 might have been Battestilli. I'm not really
5 positive.

6 Q. Then they are both in the living
7 room with Troy, and he's on his side?

8 A. Yes.

9 Q. He is handcuffed?

10 A. Yes. And shackled.

11 Q. And shackled. Handcuffed in the
12 back?

13 A. Yes.

14 Q. They are waiting for the ambulance
15 to arrive?

16 A. Right.

17 Q. Do you have a time estimate, how
18 long from that point to the time -- and if you
19 don't, again I'm asking only because I don't
20 know if you might know.

21 A. No. I don't recall it.

22 Q. Did anybody indicate to you that
23 they calculated the time from the ambulance
24 trip sheet?

25 A. Nope.

1 B. Wingard - by Mr. Donahoe

2 Q. Had you ever seen the ambulance trip
3 sheet?

4 A. No.

5 Q. Do you know what ambulance company
6 it was?

7 A. It was out of Brookville -- Big Run
8 I'm pretty sure.

9 Q. I think it said in there Big Run.
10 Are they called Big Run Ambulance or EMS?

11 A. Yeah. Big Run probably volunteer.

12 Q. Is their headquarters in Brookville?

13 A. No. Jefferson County. Brookville
14 is in Jefferson County. Their headquarters is
15 on Pine Street, Punxsutawney.

16 Q. Okay. So they are close to where
17 this residence was, Kim's residence?

18 A. Big Run is closer, only four miles
19 away, and that's why they get there, not
20 Punxsutawney ambulance, even though they work --
21 even though it is in Punxsutawney.

22 Q. Did you know any of the EMS folks
23 who arrived?

24 A. No.

25 Q. Did Tim or Kim?

1 B. Wingard - by Mr. Donahoe

2 A. No.

3 Q. Until the EMS folks arrived, was
4 Troy moved at all?

5 A. No.

6 Q. What did Battestilli do during this
7 period of time? Did he stand there as you said?

8 A. Yeah. Him and Johnson just stood
9 over him, and I was next to them.

10 Q. Did you hear them discuss anything
11 between them?

12 A. No.

13 Q. Did you hear them get on their
14 walkie-talkie, their radio, or their phone?

15 A. No. Not at all.

16 Q. Did you have discussions amongst
17 yourself, either you, Kim, and Tim or you and
18 the Troopers?

19 A. No. We was just crying. Me and Kim
20 was crying, holding each other. Tim was over
21 there behind the couch crying.

22 Q. You were in the kitchen?

23 A. Yes. With Kim.

24 Q. What happened then when the EMS
25 folks arrived?

1 B. Wingard - by Mr. Donahoe

2 A. They came in through the back door,
3 like the door that everybody usually comes in.

4 Q. How many, if you recall? If you
5 don't --

6 A. There was at least four there.
7 Yeah, I'm pretty sure there was four. At least
8 three or four.

9 Q. With equipment?

10 A. Yes.

11 Q. What did they do, if you remember?

12 A. First of all, they asked -- well,
13 one of the police officers, I don't recall who
14 it was, told him he wasn't breathing. And then
15 they got down, and they were assessing him.

16 Q. Did you see that they were trying to
17 apply some sort of first aid, resuscitation?

18 A. Right. They were checking for a
19 pulse and things. Then they asked the State
20 Police to remove the handcuffs, which they did;
21 and then they applied oxygen, an oxygen mask.

22 Q. A mask?

23 A. Maybe they were pumping that thing.
24 That's probably what it was. Then they started
25 CPR, and it didn't work. So they put a neck

1 B. Wingard - by Mr. Donahoe

2 brace on him, put him on the gurney, and took
3 him out to the ambulance.

4 Q. How long, if you recall --

5 A. (Witness indicating.)

6 Q. Again, you're indicating you didn't
7 really have a recollection. That's fine.

8 A. I don't know the times.

9 Q. In your statement it says, Paragraph 10
10 on Page 17, towards the bottom of Paragraph 10,
11 "he came back in and they both just stood there
12 looking down at Troy." 11, "Kim and I were
13 crying. I didn't know what to do. Tim was
14 across the room crying." 12, "a few minutes
15 later (about 10 minutes) the ambulance got
16 there."

17 A. Okay. Maybe it was about ten minutes
18 the ambulance got there.

19 Q. Do you happen to have a recollection
20 now or is that just probably what you
21 remembered then?

22 A. That's probably what I remembered.

23 Q. Fine.

24 (Short recess taken.)

25 MR. DONAHOE: I think those

1 B. Wingard - by Mr. Weber
2 are all the questions I have right now,
3 Ms. Wingard. Thank you.

4 - - - - -

5 EXAMINATION

6 BY MR. WEBER:

7 Q. I just have a few follow-up
8 questions for you about what we discussed
9 today.

10 Earlier in the testimony we talked
11 about Mucinex and Troy's use of that. Did Troy
12 take Mucinex to treat his medical conditions?

13 A. He took it before whenever he first
14 had a cold, a chest cold. Then whenever he had
15 that cold, he was taking Mucinex, and he told
16 me that it seemed like it helped his Crohn's
17 symptoms.

18 Q. Okay. Any other medical conditions,
19 to your knowledge, that he used it to treat?

20 A. No.

21 Q. We also earlier talked about the
22 role Troy played in your life and other family
23 members' lives. I just wanted to clarify a few
24 things about that. Did you enjoy Troy's
25 companionship?

1 B. Wingard - by Mr. Weber

2 A. Oh, yes. A lot.

3 Q. How significant would you say Troy's
4 place in your life was compared to that of
5 other friends and family?

6 A. Me and Troy was always close.

7 Q. Would you say very close, somewhat
8 close?

9 A. Very close.

10 Q. How involved in your life was Troy?
11 You can just qualify that as very, somewhat, a
12 little bit.

13 A. Very.

14 Q. Compared to other family members'
15 lives or friends' lives, how involved was he in
16 your life?

17 A. Very involved. Me and Troy talked
18 about everything. We was open to each other,
19 and he was the one I would mostly turn to.
20 Terry was further away; and Tim was sometimes,
21 he would be going on trips, something away back
22 home and stuff, Potter County and stuff.

23 Q. Would you say that Troy was the most
24 significant relationship you had in your life
25 at that time?

1 B. Wingard - by Mr. Weber

2 A. Yes.

3 Q. At the time that he passed away?

4 A. Yes.

5 Q. Would you say you depended on Troy
6 at all?

7 A. Yes, I did.

8 Q. How did you depend on him?

9 A. Tim didn't have his license, I
10 didn't have a license, so he was there for me.
11 Also, if I had any problems or me and Tim had
12 any arguments, because me and him got into a
13 few arguments, I would always talk about it
14 with Troy. So he was there for me. He was
15 like a rock for me.

16 Q. Okay. There was also testimony
17 about the interaction between the two police
18 officers and Troy, and when they entered I
19 believe there was testimony that Troy became
20 agitated?

21 A. Not at first. It was just like all
22 they said was, well, what's going on, Troy?
23 And I don't think -- Troy just said not too
24 much or something like that. Whenever they
25 kept asking him different questions, well,

1 B. Wingard - by Mr. Weber

2 almost the same question: What's going on?

3 What's up, Troy?

4 Then he told them I got it all
5 figured out, there was the one cop, Battestilli
6 I think it was, asked him what he had figured
7 out, and he told him life. And that's whenever
8 Battestilli laughed at him, and that's whenever
9 Troy started getting aggravated.

10 Q. Now, there's a lot of testimony
11 about the word "punch" being used regarding
12 Troy's physical interaction with the officers.

13 A. Right.

14 Q. The word "punch," as it's been
15 described, can you describe what happened?
16 What you call a punch and what's been referred
17 to as a punch, can you describe that a bit for me?

18 A. I think "punch" is the wrong word.
19 Punch sounds like it's already done; it
20 connected. I would say a swing, you know, now.
21 Whenever I am thinking about it, a punch would
22 seem like it would -- I mean, he swung at him,
23 and he did not connect.

24 Q. How hard did he swing?

25 A. I don't think he swung that hard.

1 B. Wingard - by Mr. Weber

2 Because I was next to him, and it was just, I
3 don't know, it just didn't seem like it was
4 very hard. It just looked like I could have
5 reached out and grabbed his arm is how easy it
6 seems like he swung.

7 Q. Do you know if it was an open or
8 closed fist that Troy had?

9 A. It was a closed fist.

10 Q. What do you think Troy was
11 attempting to do by swinging at the officer
12 like that?

13 A. He was probably trying to hit him.

14 Q. Okay. How hard would you say in
15 terms of describing how hard the punch or arm
16 motion was? What would it have done? Would it
17 have knocked over a person, a small person?
18 Can you describe how hard it was in that sense
19 at all?

20 A. It would never have knocked over
21 either one of them. And the one guy was
22 smaller, Johnson was smaller, and it wouldn't
23 have knocked him over.

24 Q. Now, I think there was testimony
25 that the Trooper did not try to block it?

1 B. Wingard - by Mr. Weber

2 A. No, he did not.

3 Q. Do you know why?

4 A. No. He just took a step backwards
5 because I think that it was just such a slow
6 kind of punch. I don't think he really thought
7 it was threatening to him or else he knew that
8 he could get out of the way.

9 Q. So the bottle twisting as described
10 earlier, when Troy was twisting the soda
11 bottle, was that directed at anyone? I mean,
12 was Troy looking at someone while he was doing
13 that?

14 A. No. He was looking at the bottle.
15 And I really don't know -- I mean, I could
16 maybe take a guess at why he was doing it, but
17 I really don't --

18 Q. I don't want you to guess. I'm just
19 wondering if it was directed at anyone. Was he
20 looking at anyone while he was doing that?

21 A. No.

22 Q. There was also testimony later about
23 the physical interaction between the officers
24 and Troy where Troy ended up down on the
25 loveseat. Regarding that interaction, did the

1 B. Wingard - by Mr. Weber

2 officers push Troy onto the loveseat in a way
3 that Troy left contact with them and fell into
4 the seat or did they tackle Troy and fall into
5 the seat while maintaining contact with him?

6 A. The last one: They tackled him,
7 knocked him to the -- maintained contact with
8 him.

9 Q. So they maintained contact with him?

10 A. Yes.

11 Q. Were they both on the same -- Troy
12 was between both of them and the loveseat; is
13 that correct? Or would you say --

14 A. Yeah, yeah. That's correct.

15 Q. At one point I think there was
16 testimony that someone said, Troy, quit
17 resisting.

18 A. That was me.

19 Q. You said that?

20 A. Yes. And also one of the officers
21 said that to him.

22 Q. One of the officers said that?

23 A. Yes.

24 Q. How many times did the officers --

25 A. Just once.

1 B. Wingard - by Mr. Weber

2 Q. Do you remember which officer said
3 that?

4 A. I'm thinking it's Battestilli, but
5 I'm not positive.

6 Q. Okay. Now, there was discussion
7 about handcuffs being put on Troy and officers
8 kneeling on Troy's back and neck. When they
9 were kneeling on his back and neck, did you see
10 one or more of the officers putting full weight
11 on Troy?

12 A. Just the one. His had his knee in
13 Troy's side, his neck and throat area, and his
14 knee in the middle of his back.

15 Q. Did the officer have any contact
16 with the ground or any other object?

17 A. Just his toes was touching the
18 ground, and his toes was, like, bent. You
19 could tell all of his weight was on Troy.

20 Q. Was his body mass completely over
21 Troy?

22 A. Yes.

23 Q. Troy was exactly between the floor
24 and the surface?

25 A. The floor. It was a hard floor.

1 B. Wingard - by Mr. Weber

2 Q. So Troy was between the floor and
3 the officer's body mass?

4 A. Yes.

5 Q. I think there has been testimony at
6 various points referring to a younger cop. Now
7 you know that to be Battestilli?

8 A. Yes.

9 Q. I think you testified that you were
10 in disbelief about the taser being used?

11 A. Right.

12 Q. Why is that?

13 A. Because I thought they had to warn
14 him and say, stop struggling or else I'm going
15 to use the taser. Maybe I seen it on TV, I
16 don't know. But I just was not expecting that
17 at all for anything. I don't know. I just
18 wasn't expecting something like that.

19 Q. Okay. I think there was testimony,
20 I believe this was your testimony, you said
21 Troy was resisting three times for sure. Can
22 you describe that again, the three times that
23 you thought he was resisting?

24 A. Well, the first time was whenever he
25 was leaning on the couch and the recliner; and

1 B. Wingard - by Mr. Weber

2 he has, I think it was Battestilli, his arm in
3 the back of his neck and pushing his face into
4 the thing; and then he tried pulling out his
5 arm, so Troy was resisting then, pulling both
6 arms back.

7 Q. Were there other times that you
8 thought Troy was resisting being handcuffed or
9 resisting the officers?

10 A. Probably again on the floor. He was
11 doing the same thing before he got tasered.
12 And then he was moving his feet and struggling
13 trying to get up. I guess that's one time.

14 Q. The moving of the feet, is that when
15 you believed he was trying to breathe?

16 A. Right. Then he stopped. There was
17 no movement.

18 Q. Later, there was testimony about
19 seeing Troy laying still and not breathing and
20 not having a pulse. At one point, you saw Troy
21 not breathing; is that correct?

22 A. I didn't see him not breathing. I
23 wasn't close enough to see his chest. But at
24 the time whenever the officer was on top of
25 him, whenever he stopped moving, he just

1 B. Wingard - by Mr. Weber
2 stopped. It was just like he was completely
3 still. And then he got, the officer, got off
4 of him, and that's when they pulled him across.
5 I thought Troy was still breathing, but it was
6 afterwards whenever Tim said, is he breathing?

7 Q. At some point, you noticed him
8 laying there completely still and not moving?

9 A. Yes.

10 Q. Now, at some point there was
11 testimony about Troy being referred to as when
12 he wakes up. Do you know about that?

13 A. Yeah. Because he said that he was
14 out cold. So I'm just saying whenever -- he
15 probably -- he said when he regains consciousness,
16 that's what his words were, then he would be
17 resisting him.

18 Q. Those were Battestilli's words?

19 A. Yes.

20 Q. So you think Battestilli believed
21 that he was unconscious at this point?

22 A. Yes. He said he's out cold.

23 Q. Okay. Now, at one point after that,
24 an officer checked Troy's pulse?

25 A. Yes.

1 B. Wingard - by Mr. Weber

2 Q. And checked his breathing?

3 A. Yes.

4 Q. That was Battestilli?

5 A. Well, both of them. Johnson lifted
6 up the shirt and looked at his chest to see if
7 it was moving.

8 Q. Did one or the other do anything
9 else besides that?

10 A. Yeah. He felt for a pulse in his
11 neck.

12 Q. Did they do anything else when he
13 was in this state of being out cold?

14 A. No.

15 Q. So they just stood there?

16 A. Uh-huh.

17 Q. Did they administer CPR at all?

18 A. No.

19 Q. Is it at this point that one of them
20 tried to contact the ambulance?

21 A. Yes.

22 Q. What did the other one do while the
23 one was trying to contact the ambulance?

24 A. He just stood inside the kitchen.

25 Q. That was Johnson --

1 B. Wingard - by Mr. Weber

2 A. I mean, in the living room.

3 Q. That was Johnson?

4 A. Yes.

5 Q. From the point at which the officer
6 said Troy was out cold to when the ambulance
7 arrived, do you know how long that approximately
8 was?

9 A. No. I don't recall.

10 Q. Was it in the course of minutes,
11 over ten minutes, or you're just not sure?

12 A. I don't know.

13 Q. There was testimony referring to a
14 gurgling noise that Troy made. How many times
15 did he make the gurgling noise?

16 A. Just once.

17 Q. That was when he was being pulled
18 across the floor to the middle of the room?

19 A. That was whenever he was in the
20 middle of the floor and they turned him over to
21 check for a pulse or check his shirt. They
22 were moving him I know that, but it wasn't like
23 dragging him or anything.

24 Q. Okay. When the officers just stood
25 around before the paramedics arrived on the

1 B. Wingard - by Mr. Weber
2 scene, did they do anything at all with Troy's
3 handcuffs or situation in how he was laying on
4 the floor?

5 A. No. They just left him lay on his
6 back, or side. I can't really remember. I
7 know he was still in the handcuffs.

8 Q. He was handcuffed behind his back?

9 A. Yes.

10 Q. And shackled?

11 A. Yes. So he probably was on his
12 right side facing the kitchen is what I am
13 thinking.

14 Q. Did anyone ever ask the officers
15 whether the cuffs should be removed?

16 A. Yes. The paramedics did.

17 Q. They weren't before that point?

18 A. No.

19 Q. Did anyone ever ask the officers to
20 do anything, you or anyone else?

21 A. No. I just assumed they were
22 trained to do things.

23 Q. Lastly, in Paragraph 10, we were
24 reviewing this in the last bit of questioning,
25 the last sentence of that paragraph, "he came

1 B. Wingard - by Mr. Fields
2 back in and they both just stood there looking
3 down at Troy," who is the "he" referring to there?

4 A. Battestilli. He came back in from
5 using his phone that he had.

6 Q. "They both" in that sentence refers
7 to Battestilli and Johnson?

8 A. Yes.

9 Q. So Battestilli and Johnson both just
10 stood there looking down at Troy?

11 A. Yes.

12 MR. WEBER: I don't think I
13 have anything else.

14 - - - - -

15 EXAMINATION

16 BY MR. FIELDS:

17 Q. I got a couple of quick follow-up
18 questions, ma'am.

19 I'm a little confused about the
20 three drive stun applications and the timing of
21 those. Are you aware that the TASER weapon
22 records every trigger pull?

23 A. I heard that afterwards. I mean, at
24 the time I didn't know that.

25 Q. So there's a record that's been

1 B. Wingard - by Mr. Fields
2 produced in this case that shows when the
3 trigger was pulled and how long those exposures
4 lasted.

5 A. Right.

6 Q. The probe mode, first one, showed
7 for a period of seven seconds.

8 A. Okay.

9 Q. And then there's a little less than
10 about a minute and a half before you see
11 another trigger pull. Is that roughly
12 consistent with your recollection of the timing?

13 A. Yes. In fact, I think maybe it
14 might have been a little longer because it was
15 like sometimes they were trying to get Troy's
16 arm up. And it wasn't exactly boom, boom,
17 boom, give him three shots. That didn't happen.

18 Q. So there's the probe mode, and then
19 there's some time that passes, and then there's
20 the first drive stun that you remember seeing;
21 correct? The probe mode shoots the probes.

22 A. Right. That came first.

23 Q. Then they pressed it against him in
24 the prong mode, there's a gap of time in there;
25 correct?

1 B. Wingard - by Mr. Fields

2 A. Yes.

3 Q. The download from the device shows
4 that the prong mode was used three times in
5 less than, well, in about 30 seconds.

6 A. What was prong mode? No wires?

7 Q. Correct.

8 A. Yes.

9 Q. But I'm confused because I thought
10 earlier you testified that there was no more
11 use of the taser after that one officer,
12 Trooper, went out to get the shackles and then
13 came back in.

14 A. What I said was I remembered three
15 of them, but I don't remember the fourth one.
16 I do not remember them using it on his leg at
17 all. So maybe that's --

18 Q. But the printout -- I'm sorry -- the
19 device shows that all four were used in about a
20 two-and-a-half minute period with the
21 three prong modes --

22 A. Right.

23 Q. -- all occurring in about 30 seconds.
24 So would you agree with me that would not be
25 enough time to go out and get the shackles and

1 B. Wingard - by Mr. Donahoe

2 then come back in for that fourth and final
3 exposure?

4 A. Right. I guess.

5 Q. So I guess what I'm asking is how
6 certain are you that there was another exposure
7 after the Trooper went out to get the shackles
8 and when they put the shackles on?

9 A. I'm not really, really certain. I
10 just know that he was tasered three times that
11 I seen. One was with the probes and two were
12 the other ones. I really can't remember. I
13 can't recall.

14 MR. FIELDS: Do you have any
15 further questions, Mr. Donahoe?

16 - - - - -

17 EXAMINATION

18 BY MR. DONAHOE:

19 Q. Two things I know already you
20 answered. Where did Troy go to high school?

21 A. Austin Area High School in Austin,
22 Pennsylvania.

23 Q. Up in Potter County?

24 A. Yeah, up in Potter County.

25 Q. How big of a high school is that?

1 B. Wingard - by Mr. Weber

2 A. Very, very small. It's one of the
3 smallest ones in Pennsylvania.

4 Q. What do they have in the senior
5 class?

6 A. Whenever he graduated, I think there
7 was, like, 14 kids. I think.

8 MR. DONAHOE: I see. That's it.

9 MR. WEBER: I just have one
10 more.

11 - - - - -

12 EXAMINATION

13 BY MR. WEBER:

14 Q. We just spoke a few minutes ago
15 about that statement in Paragraph 10, he came
16 back in and stood there just looking down at
17 Troy. I believe you said you don't remember
18 how long they were standing there?

19 A. Right.

20 Q. Do you remember what was occurring
21 at that time?

22 A. I know they didn't just stand there
23 staring down. I remember them looking at each
24 other, maybe whispering to each other, but I
25 didn't hear any words. But they did just stand

1 B. Wingard - by Mr. Weber

2 there. It's not like they kneeled down to
3 check him again or anything like that. They
4 just stood there.

5 Q. You couldn't hear what they were
6 whispering?

7 A. No.

8 Q. Were they whispering multiple
9 sentences to each other?

10 A. They could have been.

11 Q. A few words or more than that?

12 A. A few words probably.

13 Q. Were they doing anything else
14 besides whispering?

15 A. No.

16 Q. Was there anything else going on at
17 that point?

18 A. No.

19 MR. WEBER: Okay. I have no
20 further questions.

21 MR. DONAHOE: I have no
22 further questions.

23 MR. FIELDS: Is she going to
24 read and sign?

25 MR. WEBER: Yes.

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MR. FIELDS: She'll read and
sign.

Ma'am, I want to thank you for your
time today. This was a difficult experience,
and it was my intention to treat you with
respect. I hope I did.

THE WITNESS: You did.

(Signature not waived.)

(Whereupon, the above-entitled
matter was concluded at 3:33 p.m.)

- - - - -

COMMONWEALTH OF PENNSYLVANIA) E R R A T A
COUNTY OF JEFFERSON) S H E E T

BARBARA J. WINGARD
vs.
GUY A. BATTESTILLI; STEVEN E. JOHNSON; et. al.

I, BARBARA JEAN WINGARD, have read the foregoing pages of my deposition given on Thursday, December 5, 2013, and wish to make the following, if any, amendments, additions, deletions or corrections:

Pg. No. Line No. Change and reason for change:

In all other respects the transcript is true and correct.

BARBARA JEAN WINGARD

Subscribed and sworn to before me this
_____ day of _____, 2013.

Notary Public

(LGH)

1
2 COMMONWEALTH OF PENNSYLVANIA)
3 COUNTY OF ALLEGHENY)

4 I, Lina G. Hershberger, a notary
5 public in and for the Commonwealth of
6 Pennsylvania, do hereby certify that the
7 witness, BARBARA JEAN WINGARD, was by me first
8 duly sworn to testify the truth, the whole
9 truth, and nothing but the truth; that the
10 foregoing deposition was taken at the time and
11 place stated herein; and that the said
12 deposition was recorded stenographically by me
13 and then reduced to typewriting under my
14 direction, and constitutes a true record of the
15 testimony given by said witness, all to the
16 best of my skill and ability.

17 I further certify that the inspection,
18 reading and signing of said deposition were not
19 waived by counsel for the respective parties
20 and by the witness and if after 30 days the
21 transcript has not been signed by said witness
22 that the witness received notification and has
23 failed to respond and the deposition may then
24 be used as though signed.

25 I further certify that I am not a
relative, or employee of either counsel, and
that I am in no way interested, directly or
indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my seal of office this
12th day of December, 2013.

S/Lina G. Hershberger

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EXHIBIT D-3

Deposition of Kimberly Hall

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

BARBARA J. WINGARD, *

individually and as *

Administratrix of *

the Estate of TROY *

ROBERT LEE *

HOOF TALEN, *

Plaintiff * Case No.

vs. * 2:12-cv-01500

GUY A. BATTLESTILLI; * District Judge

STEVEN E. JOHNSON; * Cathy Bisson

PENNSYLVANIA STATE * JURY TRIAL

POLICE; COMMONWEALTH * DEMANDED

OF PA; TASER® *

INTERNATIONAL, INC.; *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF

KIMBERLY HALL

May 5, 2014

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by the certifying agency.

VIDEOTAPED DEPOSITION

OF

KIMBERLY HALL, taken on behalf of the
Defendants herein, pursuant to the
Rules of Civil Procedure, taken
before me, the undersigned, Rhonda K.
Thorpe, a Court Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania, at the offices of
Jefferson County Commissioners'
Office, 155 Main Street, #202, Second
Floor, Brookville, Pennsylvania, on
Monday, May 5, 2014, beginning at
11:21 a.m.

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A P P E A R A N C E S

TAMARA J. HAKEN, ESQUIRE
SUSAN A. CORRADO, ESQUIRE
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ATTORNEY

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Corrado

32, 45

Haken

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P R O C E E D I N G S

VIDEOGRAPHER:

My name is Sarah Dick.

I am an employee of Boyle
Litigation which is located
4650 Trindle Road, Suite 102,
Camp Hill, Pennsylvania,
17011. This deposition is
being recorded on Monday, May
5th, 2014, at 11:21 a.m., in
the small conference room of
the Jefferson County
Commissioners' Office located
at 155 Main Street,
Brookville, PA, 15825. This
deposition is being filmed in
connection with the case of
Barbara Wingard, et al., v.
Pennsylvania State Police, et
al., U.S. District Court for
the Western District of
Pennsylvania, Docket Number
12-cv-01500. The witness in
this deposition is Kimberly

1 Hall. This deposition is
2 being videotaped on behalf of
3 the Plaintiff.

4 ATTORNEY DONAHOE:

5 Okay. Did you swear
6 the witness?

7 COURT REPORTER:

8 Would you raise your
9 right hand, please?

10 -----

11 KIMBERLY HALL, HAVING FIRST BEEN DULY
12 SWORN, TESTIFIED AS FOLLOWS:

13 -----

14 EXAMINATION

15 BY ATTORNEY DONAHOE:

16 Q. Ma'am, my name is Tom Donahoe.
17 I'm a Deputy Attorney General. I
18 represent state agencies when they
19 get sued. Today I'm representing the
20 Pennsylvania State Police and two of
21 the troopers that work for them,
22 Troopers Battestilli and Johnson.
23 I'm asking you today questions about
24 an incident that occurred back on
25 October 18, 2010, that ultimately

1 involved also a death of Troy
2 Hooftallen. And first of all, am I
3 saying his last name correctly?

4 A. It's Hooftallen (corrects
5 pronunciation).

6 Q. Okay. I thought I might have
7 that wrong. Could you tell me your
8 name?

9 A. Kimberly Hall.

10 Q. Where do you live?

11 A. 30 West Main Street,
12 Brookville, Pennsylvania, 15825.

13 Q. How long have you lived there?

14 A. Two years.

15 Q. Where did you live before
16 that?

17 A. 27 Charley Hill Lane,
18 Punxsutawney, PA, 15767.

19 Q. How long did you live there?

20 A. Approximately eight years.

21 Q. How old are you, ma'am?

22 A. Forty-two (42).

23 Q. Are you married?

24 A. No.

25 Q. Do you have children?

1 A. Yes.

2 Q. How many?

3 A. Four.

4 Q. What are their ages?

5 A. Twenty-one (21), 20, 19, and
6 14.

7 Q. And having the preliminaries
8 out of the way here, I'm going to ask
9 you a few other questions that I ask
10 everybody who I take a deposition
11 from. One, are you able to hear and
12 understand my questions?

13 A. Yes.

14 Q. Have you taken any medications
15 today that might impair your ability
16 to understand my questions?

17 A. No.

18 Q. Fine. If you need to take a
19 break, will you tell me?

20 A. Yes.

21 Q. And if you need me to clarify
22 the question, will you tell me?

23 A. Yes.

24 Q. And if you want to talk to
25 these other attorneys in the room,

1 would you let me know?

2 A. Yes.

3 Q. Fine. Are you employed?

4 A. Yes.

5 Q. Where do you work?

6 A. McDonald's, Allegheny
7 Boulevard in Brookville.

8 Q. How long have you worked
9 there?

10 A. Two and a half years.

11 Q. Where did you work before
12 that?

13 A. Stella Foods in Punxsutawney.

14 Q. What is that?

15 A. They make spaghetti sauces and
16 barbecue sauces.

17 Q. How long did you work there?

18 A. Almost five years.

19 Q. Why did you leave there?

20 A. They laid me off. The
21 business was getting slow.

22 Q. Have they subsequently closed
23 or are they still around?

24 A. As far as I know, they're
25 still around.

1 Q. Did Troy work there also?

2 A. At one point, yes.

3 Q. All right. Prior to Stella
4 Foods, where did you work?

5 A. Gerrity's in Scranton, PA.

6 Q. All right. So Scranton, PA,
7 where did you grow up?

8 A. I grew up in Binghamton, New
9 York.

10 Q. Did you go to high school
11 there?

12 A. In Johnson City, New York,
13 yes.

14 Q. And after high school, where
15 did you go? Did you go to college?

16 A. No.

17 Q. Okay. Did you move away from
18 New York?

19 A. Yes.

20 Q. Did you move down to the
21 Scranton area?

22 A. Yes, I did.

23 Q. All right. How long did you
24 remain in the Scranton area?

25 A. Five years.

1 Q. And where did you move from
2 the Scranton to? Did you move from
3 Scranton to this
4 Brookville/Punxsutawney area?

5 A. Yes, to Punxsutawney.

6 Q. What brought you to
7 Punxsutawney, this area?

8 A. Troy and I moved out here to
9 be closer to his family.

10 Q. When did you meet Troy?

11 A. My daughter was two, so she's
12 14 now. I'm sorry. 2001.

13 Q. When you met Troy, you had one
14 child?

15 A. No, I had the four.

16 Q. All right. You already had
17 the four. Had you ever been married?

18 A. Yes.

19 Q. All right. And had you been
20 married one time or more than once?

21 A. Just once.

22 Q. Once. Did that marriage end
23 in divorce?

24 A. Yes.

25 Q. Who was your husband?

1 A. Seth Palaschak.

2 Q. And did you have four children
3 with Seth Palaschak?

4 A. No, I had just two.

5 Q. Two. Is Seth Palaschak ---
6 where does he live now?

7 A. Arizona.

8 Q. All right. Is he the father
9 of the older two?

10 A. Yes.

11 Q. Does he contribute to their
12 --- to them at all financially?

13 A. Not anymore, no.

14 Q. All right. And the one is 14
15 and how old's the other?

16 A. Nineteen (19).

17 Q. Nineteen (19).

18 A. My two girls.

19 Q. All right. Then you have two
20 other children. Are they boys or
21 girls?

22 A. Two boys, two girls.

23 Q. Who is their father?

24 A. Mike Visakay.

25 Q. Is he in this area?

1 A. No.

2 Q. And what are their ages?

3 A. Fourteen (14) and 19.

4 Q. Okay. The two boys are also
5 14 and 19?

6 A. No, I'm sorry. The boys are
7 21 --- I'm sorry. Twenty-two (22)
8 and 20.

9 Q. All right. So you were not
10 married to Mike Visakay?

11 A. No.

12 Q. Where's he live now?

13 A. Last I heard, North Carolina.

14 Q. All right. And he's not
15 contributing to the kids?

16 A. No.

17 Q. All right. So you had no
18 children with Troy?

19 A. No.

20 Q. And you met him in 2001. At
21 that time, what were the
22 circumstances under which you met
23 Troy?

24 A. We worked at the same grocery
25 store.

1 Q. Was that in Scranton?

2 A. Yes.

3 Q. Which one was that?

4 A. Price Chopper.

5 Q. What did Troy do there? What
6 kind of job?

7 A. He was the assistant night
8 manager.

9 Q. And if Troy were alive today,
10 how old would he be? Was he the same
11 age as you?

12 A. No, he's two years younger.

13 Q. Okay. So he would be 40?
14 You're 42?

15 A. Yes.

16 Q. When you met Troy, did he have
17 any children?

18 A. No.

19 Q. And he had never had any
20 children?

21 A. No.

22 Q. So how long did you and he
23 work together at Price Chopper?

24 A. I was there for five years, so
25 yeah, five years.

1 Q. Was he the night manager the
2 whole time?

3 A. Yes.

4 Q. And did you work the
5 nightshift also?

6 A. No, I was the assistant deli
7 manager.

8 Q. All right. And the reason
9 that you both moved back to ---? And
10 your place was --- where was it
11 located? What township? When this
12 incident occurred.

13 A. Gaskill Township.

14 Q. Gaskill. How close is that to
15 Punxsutawney?

16 A. Maybe a five-minute drive.

17 Q. Okay. So when you moved here,
18 did you go right to Gaskill Township?

19 A. Yes.

20 Q. The reason you moved was so
21 that Troy could be close to his
22 family?

23 A. Yes.

24 Q. What did his family consist of
25 back at that time?

1 A. His mother, his nephew
2 Matthew, his brother Tim.

3 Q. Okay. And you brought the
4 four children with you?

5 A. Yes.

6 Q. So you moved to Gaskill. Did
7 you buy a home?

8 A. No, we rented.

9 Q. And I'm sorry for losing the
10 track of these dates, but do you
11 recall the date when you got back to
12 Gaskill Township from Scranton, what
13 year that was?

14 A. I can't even think.

15 Q. Okay. That's fine. How long
16 did you live at that address?

17 A. Almost ten years.

18 Q. Almost ten. And then you've
19 been out two, so it's 2014. Did you
20 come back around 2002 or so?

21 A. Roughly, yes.

22 Q. All right. At that point, all
23 the kids are still at home; right?

24 A. Yes.

25 Q. All right. And did Troy live

1 with you full time?

2 A. Yes.

3 Q. Where did you and he both
4 start working when you came here?

5 A. I started working at Stella
6 Foods.

7 Q. And where did Troy start?

8 A. I don't remember.

9 Q. Okay. You know him. You knew
10 him well, lived with him all those
11 years. I want to get a little bit of
12 background from you. And we got a
13 lot from his mom, so I'm not going to
14 belabor the point, but you knew he
15 went to high school in North Central
16 PA somewhere? Did you know where he
17 went to high school?

18 A. He went to Austin High School.

19 Q. Where's that?

20 A. Potter County.

21 Q. Potter, okay. And he
22 graduated from Austin. And what did
23 he do after high school? Did he go
24 to further education or to the
25 military or ---?

1 A. No.

2 Q. Okay. Did he just begin
3 working?

4 A. Yes.

5 Q. And did he start working up in
6 Potter County somewhere?

7 A. I don't know.

8 Q. All right. Do you know up
9 until the time you met Troy if he
10 ever had any further training in any
11 trade or in any specialty or went to
12 school anywhere?

13 A. Not to my knowledge.

14 Q. What was his training to be a
15 night manager at the supermarket in
16 Scranton?

17 A. I really don't know. He was
18 already the assistant manager before
19 I met him.

20 Q. When he came back to Gaskill
21 Township, how was Troy's health?

22 A. To our knowledge, he was
23 healthy.

24 Q. Fine. And at that point, if
25 it was 12 years ago and Troy would

1 today be 40, he was somewhere near 30
2 at that point, am I right about that,
3 when you moved back here? Maybe 29,
4 30 years old; is that right?

5 A. Yes.

6 Q. When he moved back to this
7 area, this isn't the area where he
8 grew up? This was just an area where
9 his mom and brother were; am I
10 correct?

11 A. Yes.

12 Q. Do you know why his mom and
13 brother were down here or at this
14 location in Punxsutawney and Gaskill
15 Township?

16 A. As far as I know, Barbara had
17 moved down here to be closer to her
18 mom and her stepfather.

19 Q. I see. And Barbara was not
20 --- was she a widow or divorced at
21 the time?

22 A. Divorced.

23 Q. Divorced. Did you ever get to
24 know Troy's father?

25 A. I only met him at the funeral

1 one time.

2 Q. Okay. So he was never close
3 to the family down here in Gaskill?

4 A. No.

5 Q. All right. When you moved in,
6 there were the four children, you,
7 and Troy. Anybody else live there
8 besides the six of you?

9 A. No.

10 Q. Were you working full time?

11 A. Yes, I was.

12 Q. What school district did the
13 children attend?

14 A. Punxsutawney Area.

15 Q. I take it Troy never legally
16 adopted any of the children; ---

17 A. No.

18 Q. --- am I correct? Did Troy
19 eventually begin working here in
20 Gaskill Township?

21 A. Yes.

22 Q. And where did he start
23 working?

24 A. As far as I remember, he
25 worked at Stella Foods for a brief

1 period before he went to Jefferson
2 Wholesale --- or Jefferson Grocery.
3 Sorry.

4 Q. What did he do there at
5 Jefferson Grocery?

6 A. As far as I know, he stocked
7 shelves.

8 Q. Was that a full-time job for
9 him?

10 A. Yes.

11 Q. Now, at the time this incident
12 occurred on October 18th of 2010, was
13 Troy working anywhere?

14 A. No.

15 Q. And for how long had he been
16 out of work prior to this incident?

17 A. I can't recall, but I believe
18 it was a little over a year.

19 Q. Over a year. Up until the
20 time that he was out of work, was it
21 first Stella Foods and then this
22 company, Jefferson Grocery, where he
23 worked?

24 A. Yes.

25 Q. Did he have any income other

1 than from his jobs, if you know?

2 A. Not to my knowledge, no.

3 Q. How were the finances of the
4 family handled while you were living
5 with Troy here in Gaskill Township?
6 In other words, what did you earn?
7 Do you recall?

8 A. I worked anywhere from 30 to
9 35 hours a week.

10 Q. Any idea what the hourly rate
11 was?

12 A. \$7.25 an hour, I believe.

13 Q. And did you get benefits with
14 that as well?

15 A. No.

16 Q. No benefits. And how about
17 Troy? What was he earning, if you
18 recall, before he went out of work?

19 A. I don't recall.

20 Q. Was he 40 hours a week?

21 A. Yes, he was full time, 40
22 hours.

23 Q. Did he get benefits?

24 A. No.

25 Q. Okay. So he did not have

1 health coverage from his employer?

2 A. No.

3 Q. Okay. And any other benefits
4 that he had that you are aware?

5 A. I know he applied for the
6 Access.

7 Q. Access medical coverage?

8 A. Yes.

9 Q. Did he apply for that and get
10 it, do you know?

11 A. I'm not sure.

12 Q. All right. Did you have
13 Access medical coverage?

14 A. Yes.

15 Q. And how were your children
16 covered?

17 A. With the Access.

18 Q. With Access. All right. So
19 Troy's employment never provided
20 insurance, health insurance, for the
21 kids or yourself; am I correct?

22 A. No.

23 Q. Did you have a bank account
24 separate from Troy?

25 A. Yes.

1 Q. Where did you bank?

2 A. I had First Commonwealth.

3 Q. Do you know where Troy banked?

4 A. I believe he had the same.

5 Q. Did you two have a joint
6 account?

7 A. No.

8 Q. All right. Whose name was on
9 the lease of the home, the residence?

10 A. Both of ours.

11 Q. Both, all right. Was it
12 always both for the time you lived in
13 Gaskill?

14 A. Yes.

15 Q. Did Troy and you contribute
16 equally to the rent?

17 A. When he was working, yes.

18 Q. All right. During the last
19 year, did the burden of paying the
20 rent fall to your salary?

21 A. Yes.

22 Q. What about utilities? Was
23 that also true, that it was equally
24 shared up until the time he became
25 unemployed?

1 A. Yes.

2 Q. All right. Were there any
3 other costs besides rent and
4 utilities that you both shared? Let
5 me ask you this. Did you have a car
6 together?

7 A. No.

8 Q. Did you pay for your own car?

9 A. Yes.

10 Q. Did he pay for his?

11 A. Yes.

12 Q. All right. Any other costs or
13 expenses that you both shared?

14 A. Besides food, that was it.

15 Q. Okay. Did you buy that
16 together?

17 A. Yes.

18 Q. And would that be food that
19 was also obviously for the kids;
20 right?

21 A. Yes.

22 Q. And so while he was paying
23 part of your expenses, that meant
24 that he was paying part for the
25 children ---

1 A. Right.

2 Q. --- in terms of utilities,
3 rent and food?

4 A. Yes.

5 Q. All right. Was that the case
6 all the time that you two had lived
7 together?

8 A. Yes.

9 Q. All right. Did any of your
10 children pursue higher education
11 beyond high school?

12 A. No.

13 Q. All right. Did Troy ever
14 contribute to any tuition costs for
15 them in any way?

16 A. No.

17 Q. All right. Any other expenses
18 of your children that you can think
19 of that Troy contributed to?

20 A. No.

21 Q. All right. During the time
22 that you knew Troy, had he ever been
23 arrested or charged with any crimes?

24 A. No.

25 Q. All right. Do you know if he

1 ever had been prior to the time you
2 knew him?

3 A. No.

4 Q. All right. No problem with
5 his driver's license ever being
6 suspended or anything like that?

7 A. No.

8 Q. And none for you either, I
9 would take it?

10 A. No.

11 Q. These are all questions that I
12 ask everybody when I take their
13 deposition, so I don't mean to be
14 offensive. What was the cause of
15 Troy not working for the year or so
16 prior to the incident in 2010?

17 A. He had health problems.

18 Q. All right. Do you know the
19 nature of them generally ---?

20 A. Yes. He had ulcerative
21 colitis.

22 Q. Did he have any other problems
23 that go along with ulcerative colitis
24 you were aware of?

25 A. No.

1 Q. All right. Did he go to a
2 doctor for treatment?

3 A. Yes.

4 Q. Who was his doctor?

5 A. I believe it was Doctor
6 Chambers in Punxsutawney.

7 Q. Was Chambers a specialist?

8 A. I'm not sure.

9 Q. Okay. Do you know for how
10 long Troy suffered with ulcerative
11 colitis that you were aware of prior
12 to his death?

13 A. It was a little over a year.

14 Q. Was he ever hospitalized for
15 that condition?

16 A. Other than going in for a
17 colonoscopy, no.

18 Q. Where did he have the
19 colonoscopy?

20 A. He had one done in Indiana and
21 he had one done in Punxsutawney.

22 Q. Other than it being ulcerative
23 colitis, did you learn anything more
24 about the condition?

25 A. No.

1 Q. All right. Prior to the time
2 that Troy was diagnosed with
3 ulcerative colitis, did he take any
4 medications that you're aware of?

5 A. Just the ones from the doctor
6 to help him.

7 Q. No, I mean even before, before
8 the time he learned he had this
9 disease.

10 A. Oh, no. Not to my knowledge.

11 Q. And do you know what the
12 doctor prescribed for Troy with
13 respect to his ulcerative colitis?

14 A. I really don't know.

15 Q. Okay. Do you know if it was
16 prescription medication?

17 A. Yes.

18 Q. Would you know where he bought
19 it?

20 A. At the time it was Rite Aid, I
21 believe.

22 Q. Is that in ---

23 A. Punxsutawney.

24 Q. --- Punxsutawney? Okay. And
25 it would have been on Doctor

1 Chambers' prescription?

2 A. Yes.

3 Q. And do you know his first
4 name?

5 A. No, I don't.

6 Q. And he's in Punxsutawney. Do
7 you know if he's an internist or
8 gastroenterologist?

9 ATTORNEY CORRADO:

10 Objection. She already
11 said she didn't know if he was
12 a specialist.

13 BY ATTORNEY DONAHOE:

14 Q. Okay. You don't know what
15 kind of ---?

16 A. No.

17 Q. Okay. Other than Doctor
18 Chambers, did he treat with anybody
19 else that you knew of?

20 A. Not to my knowledge.

21 Q. Did you observe how ulcerative
22 colitis affected Troy in his daily
23 activities?

24 A. Yes.

25 Q. Can you describe what you

1 observed?

2 A. He had a lot of stomach pains,
3 continuously going to the bathroom.

4 Q. Did they affect him
5 differently at various times of the
6 day?

7 A. No.

8 Q. Did it affect his diet?

9 A. No.

10 Q. Did he gain weight, lose
11 weight, anything that you noticed
12 about his physical appearance during
13 the year or so that he was
14 unemployed?

15 A. No.

16 Q. All right. And when he became
17 ---? Was it his condition that made
18 him no longer able to work?

19 A. Yes.

20 Q. And what did he say about what
21 his condition did that made him
22 unable to work?

23 A. It was just very hard for him
24 to work because he was always running
25 to the bathroom.

1 Q. And I forgot to ask you this,
2 but do you know, did he contribute
3 any of his salary when he was working
4 to his mother?

5 A. Not to my knowledge.

6 Q. All right. Do you know if he
7 contributed it to anyone else?

8 A. No.

9 Q. And he did own a car?

10 A. Yes.

11 Q. Correct? Did he own anything
12 else you're aware of other than a
13 car, because you didn't have the
14 house, you rented the house? But did
15 he own like a hunting camp, any
16 camper, motorcycle, anything like
17 that?

18 A. No.

19 Q. All right. When Troy became
20 unable to work, do you know if he
21 applied for any kind of disability
22 benefits?

23 A. Not to my knowledge.

24 Q. Okay. Not Social Security?

25 A. No.

1 Q. Do you know when he applied
2 for Medicaid Access?

3 A. I don't remember.

4 Q. Okay. Prior to the date
5 October 18th of 2010, do you know
6 whether or not Troy had ever taken
7 any drugs not for medical purposes
8 but to get high?

9 A. No.

10 Q. Is that no, I don't know, or
11 he did not?

12 A. To my knowledge. You know, I
13 don't know.

14 Q. Okay.

15 A. I didn't see him take
16 anything.

17 Q. Did you ever see him take ---?
18 Well, first of all, with respect to
19 Mucinex, do you know whether or not
20 he was ever taking Mucinex?

21 A. I've never seen him take it.

22 Q. Okay. Do you know if it was
23 in the house or not?

24 A. Not to my knowledge.

25 Q. All right. And do you and

1 Troy share a bathroom?

2 A. Yes.

3 Q. Did it have a medicine
4 cabinet?

5 A. Yes.

6 Q. Did you ever see Mucinex in
7 the bathroom medicine cabinet or
8 anywhere else in the house?

9 A. No.

10 Q. Do you even know what a box of
11 it looks like?

12 A. Yes.

13 Q. Okay. And you had never seen
14 it in the home before?

15 A. No.

16 Q. And you have no knowledge or
17 understanding that Troy had ever
18 abused it before?

19 A. No.

20 Q. Did his mom ever tell you that
21 he did ---

22 A. No.

23 Q. --- prior to the date of this
24 incident?

25 A. No.

1 Q. Did his brother Tim ever tell
2 you that he had done it before?

3 A. No.

4 Q. Did he ever smoke marijuana
5 that you know of?

6 A. In the past, yes.

7 Q. How about in the year before
8 the incident in October of 2010?

9 A. No.

10 Q. All right. Did he drink
11 alcohol?

12 A. Occasionally.

13 Q. Okay. But never abused it if
14 you know?

15 A. No.

16 Q. All right. And he lived with
17 you, you know, all the time? It
18 wasn't like he moved in and out or
19 anything?

20 A. No.

21 Q. All right. Did you ever have
22 occasion to have to get the police
23 called to your home for any
24 threatened violence by Mr. Hooftallen
25 against either you or anybody else in

1 the home?

2 A. No.

3 Q. All right. There was an
4 incident of an attempted suicide a
5 couple weeks before his demise; am I
6 correct about that?

7 A. Yes.

8 Q. All right. Other than that
9 incident, did you ever have to call
10 the police with respect to Troy's
11 behavior?

12 A. No.

13 Q. Do you know if his family ever
14 had to?

15 A. Not to my knowledge.

16 Q. All right. Did you ever
17 observe his behavior to be erratic or
18 violent in a way that caused you to
19 have concern prior to the date of
20 this incident or the suicide?

21 A. No.

22 Q. All right. Were you present
23 when he became --- when his behavior
24 was such that he was treated for
25 suicidal thoughts? Were you there?

1 A. I was at work that day.

2 Q. All right. Can you tell me
3 what you recall about that incident?

4 A. I had come home from work and
5 I went in the bedroom to go change,
6 and he was sleeping. And there was a
7 note on the nightstand. And I read
8 it and I took it over to Barbara.

9 Q. All right. What shift were
10 you working that day?

11 A. I believe I was working either
12 5:00 a.m. or 6:00 a.m. in the morning
13 until 2:00, 3:00 in the afternoon.

14 Q. All right. So you came home
15 in the afternoon and there was a note
16 on the nightstand?

17 A. Yes.

18 Q. All right. What did it say?

19 A. He just said he was sorry and
20 he loved everybody.

21 Q. It was Troy's note?

22 A. Yes.

23 Q. All right. And was it signed
24 by him?

25 A. I don't remember.

1 Q. Other than I'm sorry and he
2 loved everyone, anything else he
3 indicated in that note?

4 A. I don't remember.

5 Q. All right. So you took it to
6 Barbara. Did she live nearby?

7 A. Yes, she lived on the
8 property.

9 Q. Fine. Who owned the property?

10 A. Charles Seitz.

11 Q. All right. So how many
12 residences besides the --- besides
13 yours and Barbara's were on the
14 property?

15 A. I want to say there was seven.

16 Q. Fine. Seitz is S-E-I-T-Z?

17 A. Yes.

18 Q. Did he own then a number of
19 residences that he rented out to
20 people?

21 A. Yes. It was called Hillcrest
22 Farm.

23 Q. Very good. Okay. Could you
24 walk over to Barbara's home?

25 A. Yes.

1 Q. You took it over there. Who
2 was there when Barbara was there?

3 A. It was Barbara and Tim.

4 Q. Did Tim live with Barbara?

5 A. Yes.

6 Q. Was he younger than Troy?

7 A. Yes.

8 Q. Did he work?

9 A. Back in Scranton he did, but
10 when we moved to Punxsy, he didn't.

11 Q. How come he didn't work?

12 A. I guess he had hurt himself
13 when he was working for a tree guy.

14 Q. Okay. So was he getting any
15 kind of disability benefits?

16 A. Not to my knowledge.

17 Q. All right. And did Barbara
18 work, the mom?

19 A. No.

20 Q. All right. Did either Barbara
21 or Tim contribute any money to your
22 household?

23 A. No.

24 Q. What did you say to Barb and
25 what did you and she do?

1 A. I told her I think he's trying
2 to kill himself, and I gave her the
3 note. And she called 911, and Tim
4 ran over.

5 Q. All right. Tim ran to your
6 home?

7 A. Yes.

8 Q. And did you go back to the
9 home?

10 A. No.

11 Q. Where did you stay?

12 A. I didn't go right away. I
13 stayed with Barbara.

14 Q. All right. And what happened?
15 How did that incident then play out?
16 What happened?

17 A. Tim had gotten Troy up and
18 woke him up and the ambulance had
19 come and they had taken him to the
20 hospital to pump his stomach.

21 Q. What hospital?

22 A. Punxsutawney.

23 Q. All right. Now, when you saw
24 Troy and read the note, was there any
25 indication as to what, if anything,

1 he had ingested?

2 A. There was a pill bottle on the
3 table. I don't remember what it was.

4 Q. Did you ever know what it was?

5 A. No.

6 Q. Do you know whose pills they
7 were?

8 A. No.

9 Q. How long did they keep Troy at
10 the hospital?

11 A. A couple of days, I believe.

12 Q. Was he involuntarily committed
13 to the hospital for a psychiatric
14 evaluation, if you know?

15 A. Yes.

16 Q. And it was the Punxsutawney
17 Hospital?

18 A. Yes.

19 ATTORNEY DONAHOE:

20 All right. I believe I
21 have those records provided to
22 me on a CD, but if I don't,
23 would you be willing to
24 provide authorization for
25 those?

1 ATTORNEY CORRADO:

2 Yes.

3 BY ATTORNEY DONAHOE:

4 Q. Did you go into the hospital
5 and visit with Troy and his doctors
6 while he was in there?

7 A. I visited with Troy, yes.

8 Q. Okay. Did you ever talk to
9 his doctors?

10 A. No.

11 Q. What did Troy say about why he
12 was taking an overdose? What did he
13 say about his incident?

14 A. He was just tired of being in
15 pain from the colitis.

16 Q. Did he complain of pain often
17 in the year that he was diagnosed
18 with colitis?

19 A. Yes.

20 Q. What type of complaints would
21 he make?

22 A. Just that his stomach hurt.

23 Q. Okay. Anything else?

24 A. No.

25 Q. Now, prior to this year, had

1 he ever exhibited any indication that
2 he was suicidal?

3 A. No.

4 Q. All right. What else did he
5 say about I'm tired of being in pain
6 and that was my reason for trying to
7 kill myself? What else did he say?
8 Do you remember?

9 A. No, I don't.

10 Q. All right. Did you talk to
11 him and try to elicit any kind of
12 positive response from him?

13 ATTORNEY CORRADO:

14 That's vague.

15 ATTORNEY DONAHOE:

16 Yeah, you're right.

17 BY ATTORNEY DONAHOE:

18 Q. Did he ever indicate that he
19 was no longer suicidal?

20 A. Yes.

21 Q. What did he say?

22 A. He said he was happy that it
23 didn't go through.

24 Q. All right. Did he express any
25 plans for dealing with his colitis?

1 A. Yes, he was going to go to ---
2 make sure he got another doctor
3 because the prescriptions they were
4 giving him wasn't working.

5 Q. So did he have some --- did he
6 indicate anything that would indicate
7 to you that he was hopeful for the
8 future or he had any goals for his
9 future health?

10 A. Yes.

11 Q. And what did he say in that
12 regard?

13 A. He just wanted to find a good
14 doctor to help him get better.

15 Q. Okay. Then did he return
16 home?

17 A. Yes.

18 Q. This incident, how many weeks
19 before his death did that incident
20 happen?

21 A. Just a few weeks, I believe.

22 Q. What was his demeanor during
23 the few weeks he was home before
24 October 18th, 2010?

25 A. He was his same, happy self.

1 Q. All right. What would he do
2 during the day?

3 A. Nothing really. Just hang out
4 at home while the kids and I were
5 out.

6 Q. All right. Did he have a
7 routine that he followed, if you
8 know?

9 A. Yes. He would get up and eat
10 something and then he'd go over and
11 see his mom for a while.

12 Q. Okay. Anything else?

13 A. Not to my knowledge.

14 Q. Was he a smoker?

15 A. Yes.

16 Q. How many packs a day? Do you
17 know?

18 A. Maybe a half a pack.

19 Q. Any other activities he had as
20 hobbies or ---?

21 A. He played videogames.

22 Q. All right. Your house or her
23 house?

24 A. Both.

25 Q. Did he have any sports or

1 anything that he engaged in?

2 A. He liked playing basketball.

3 Q. All right. Was he able to do
4 that during the year he had Crohn's
5 --- or I mean, ulcerative colitis?

6 A. Not really, no.

7 Q. All right. Was he a hunter?

8 A. No.

9 Q. Fisherman?

10 A. No.

11 Q. Any other activities you can
12 think of?

13 A. No.

14 Q. All right. Who did he
15 socialize with besides Tim and his
16 mom?

17 A. Just me and my children, and
18 that's it.

19 Q. Did you belong to any clubs or
20 organizations that you went to on a
21 regular basis?

22 A. No.

23 Q. I'm sure you recall the day
24 when the state police and the EMS
25 were called to your residence and

1 Troy ultimately died that night. Do
2 you recall it was October 18th, 2010?

3 A. Yes.

4 ATTORNEY CORRADO:

5 I just want to offer a
6 break if she wants one.

7 ATTORNEY DONAHOE:

8 Yeah, I'm going to get
9 a break too and get a glass of
10 water if you don't mind. Take
11 a minute.

12 VIDEOGRAPHER:

13 This deposition has
14 paused.

15 OFF VIDEO

16 SHORT BREAK TAKEN

17 ON VIDEO

18 VIDEOGRAPHER:

19 Are you ready?

20 BY ATTORNEY DONAHOE:

21 Q. Oh, I had asked you about that
22 day of October 18, 2010. And
23 whatever I asked you the last time,
24 let me just start. Let me ask you,
25 how did that day go for you? Were

1 you working?

2 A. I can't remember what day of
3 the week it was. I think it was a
4 Sunday.

5 Q. October 18th?

6 A. Uh-huh (yes).

7 Q. Okay. It will be on the
8 report somewhere, but ---?

9 A. If it was a weekday, I was
10 working.

11 Q. Okay. The incident occurred
12 late in the evening, it began; right?
13 After ten o'clock p.m.?

14 A. Yes.

15 Q. So where were you initially
16 when the incident began? Were you
17 sleeping?

18 A. Yes.

19 Q. All right. And you don't know
20 if you had worked that day or not?

21 A. That day, no. I had work the
22 next day.

23 Q. When you have work the next
24 day, what time are you required to be
25 at your employment?

1 A. 5:00 or 6:00 in the morning.

2 Q. All right. So that's early?

3 A. Yes.

4 Q. What time did you have to get
5 up?

6 A. Usually I usually got up about
7 an hour before.

8 Q. So you could have been getting
9 up as early as 4:00 or 5:00 in the
10 morning?

11 A. Yes.

12 Q. You're in bed. And were the
13 other kids all in bed too?

14 A. My three younger ones were,
15 yes.

16 Q. All right. And I read your
17 statement. One of the kids was still
18 up with Troy?

19 A. Yes, my son Joshua.

20 Q. How old was Josh? How old is
21 he now?

22 A. He's going to be 23 this year,
23 I think.

24 Q. So he would have been what,
25 19, 20 at the time?

1 A. Yeah, he had already
2 graduated.

3 (Hall Deposition
4 Exhibit One marked for
5 identification.)

6 BY ATTORNEY DONAHOE:

7 Q. All right. And I have a copy
8 of your statement. And I marked it
9 as Hall Exhibit Number One and I
10 provided a copy to your attorney, and
11 I'm going to give a copy to you. And
12 take as long as you want to and look
13 at that. And you let me know when
14 you're ready. Okay?

15 WITNESS COMPLIES

16 A. Okay.

17 BY ATTORNEY DONAHOE:

18 Q. All right. The last page says
19 June 4th, 2011 on it.

20 OFF RECORD DISCUSSION

21 BY ATTORNEY DONAHOE:

22 Q. The last page of this exhibit
23 says sworn to and subscribed June 4,
24 2011. Is that pretty much your
25 recollection of when you gave the

1 statement?

2 A. Yes.

3 Q. Do you know who typed up your
4 statement?

5 A. No, I don't.

6 Q. Did you write out a statement
7 or did you get interviewed and
8 someone recorded you?

9 A. I wrote out a statement and I
10 also got interviewed.

11 Q. All right. At the same
12 meeting?

13 A. No.

14 Q. When did you write out the
15 statement? Was it earlier than this
16 statement is dated?

17 A. Yes.

18 Q. Where were you when you wrote
19 your statement out?

20 A. I was at home.

21 Q. Did you write it out in the
22 presence of anybody else?

23 A. No.

24 Q. Who requested that you write
25 out a statement?

1 A. I believe it was the lawyers
2 in the case.

3 Q. Who did you send this
4 statement to?

5 A. I had given it to Barbara
6 Wingard, and she had given it to her
7 lawyers.

8 ATTORNEY DONAHOE:

9 And I don't think I
10 have a copy of the written
11 statement, so I would request
12 it that if Counsel has it,
13 they send me a copy of the
14 written statement.

15 ATTORNEY HAKEN:

16 I will look for it.

17 ATTORNEY DONAHOE:

18 You don't know if you
19 have it or not?

20 ATTORNEY HAKEN:

21 I do not.

22 ATTORNEY DONAHOE:

23 Is it possible it was
24 with the Lanahan firm that was
25 previously ---?

1 ATTORNEY HAKEN:

2 That is a possibility.

3 ATTORNEY DONAHOE:

4 Okay. Could you see if
5 you do?

6 ATTORNEY HAKEN:

7 Yes, I'll look at that.

8 ATTORNEY DONAHOE:

9 Thanks.

10 BY ATTORNEY DONAHOE:

11 Q. And then you did a written
12 statement and then you also did a
13 recording --- a recorded statement;
14 is that correct?

15 A. As far as I know, yes.

16 Q. Now, did someone come and
17 interview you to get that statement?

18 A. Yes.

19 Q. And was that approximately on
20 June 4th of 2011?

21 A. I really don't remember.

22 Q. Okay. Where did it happen?

23 A. At my residence.

24 Q. Who was present for that
25 statement?

1 A. It was myself, Barbara, and I
2 can't remember who the guy was.

3 Q. Did you understand he was an
4 investigator for somebody?

5 A. Yes.

6 Q. Was it for her, Barbara?

7 A. Yes, it was.

8 Q. Fine. Is that statement what
9 generated this Affidavit?

10 A. Yes.

11 Q. All right. And you signed the
12 Affidavit?

13 A. Yes.

14 Q. Did you sign it in front of
15 this notary here or did you send ---?
16 I don't really care. I mean, do you
17 know if the notary was there?

18 A. I don't remember.

19 ATTORNEY HAKEN:

20 I'm sorry. Are you
21 asking if the notary was there
22 for the recorded?

23 ATTORNEY DONAHOE:

24 No, just for ---.

25 ATTORNEY HAKEN:

1 Oh, okay.

2 BY ATTORNEY DONAHOE:

3 Q. But anyway, I'm going to go
4 through the statement a little bit
5 because it seems to be in
6 chronological order. So going to the
7 first page of it, it said at number
8 four, the purpose of my declaration
9 is to recall my observations of the
10 incident that led to the death of
11 Troy Hooftallen in October 2010.
12 Number five, Troy had been depressed
13 over his ulcerative colitis and bowel
14 disorder issues. Troy had been
15 taking Mucinex as he felt it provided
16 relief for his health problems. Do
17 you know how you became aware he had
18 been taking Mucinex?

19 A. I had heard him say it at one
20 time.

21 Q. And you previously had said, I
22 assume this doesn't refresh your
23 recollection, that you don't know if
24 it was over the counter or
25 prescription?

1 A. I don't know.

2 Q. Number seven, you said I had
3 gone to bed. Troy and my older son
4 Josh were in the living room watching
5 TV. About 10:30 p.m., I heard Troy
6 scream out my name. Josh told me
7 that Troy just stood up and screamed.
8 I came out to the living room and
9 asked what was going on. Troy seemed
10 very confused. Was your home a one-
11 floor?

12 A. Yes.

13 Q. So you just came down the
14 hallway?

15 A. Yes.

16 Q. And encountered both of the
17 --- both gentlemen?

18 A. Yes.

19 Q. Number nine, I called Tim
20 Hooftallen, Troy's brother, to come
21 over and talk to Troy. Tim did. He
22 asked Troy if he had been taking
23 pills, Mucinex. Troy said he hadn't,
24 that he was done with them. Did you
25 overhear that conversation?

1 A. Yes.

2 Q. Did that take place in the
3 living room?

4 A. Yes.

5 Q. Now, at one point in the
6 Affidavit, you indicated that you do
7 have a photograph of the mark on the
8 wall that was created by Troy's
9 hitting the wall with his head?

10 A. The bar.

11 Q. The bar. Do you have that
12 photograph anywhere?

13 A. I had given that to Barbara.

14 Q. All right.

15 ATTORNEY DONAHOE:

16 Does Counsel have a
17 copy of that photograph?

18 ATTORNEY HAKEN:

19 We at this point have
20 not located it.

21 ATTORNEY DONAHOE:

22 Fine. All right.

23 ATTORNEY HAKEN:

24 I can look into it
25 further and see if we can ---.

1 ATTORNEY DONAHOE:

2 Just that it would give
3 a little bit of a diagram, an
4 understanding of the house.

5 BY ATTORNEY DONAHOE:

6 Q. And you don't live there
7 anymore?

8 A. No.

9 Q. Do you have any photographs of
10 that living room?

11 A. I believe I do at home
12 somewhere.

13 Q. All right. And I'm going to
14 ask your lawyer if you could ask to
15 get --- if you can locate them to
16 provide a copy because it will ---
17 you know, a picture's worth a lot of
18 words. So at this point, we don't
19 have a picture of the living room.

20 I'm going to page two. And you said
21 I sat with Troy for a while. I
22 intended to walk him over to his
23 mom's place and I helped Troy start
24 to get his shoes and sweatshirt on.
25 After a brief amount of time passed,

1 Troy seemed to completely forget what
2 was going on.

3 So on the prior page, you
4 indicated that when you went into the
5 room, into the living room, he seemed
6 confused, and here Troy forgot what
7 was going on. Had you ever observed
8 this type of demeanor with Troy
9 previous to this evening?

10 A. No.

11 Q. And what more can you say
12 about your observations of his
13 demeanor other than what you wrote?

14 A. Nothing really. I mean, he
15 just didn't know what was going on.

16 Q. Did you have any understanding
17 as to ---? I mean, ordinarily Troy,
18 if he was awake, would know what was
19 going on; am I correct?

20 A. Right.

21 Q. Did you have any understanding
22 about what was the cause of Troy
23 seeming to be confused and not
24 knowing what was going on?

25 A. No, I didn't.

1 Q. Okay. At that point, Troy,
2 after you noticed that he seemed to
3 have forgotten what was going on, you
4 called Barbara, his mom, and Tim.
5 They both came over, but only Tim
6 came into your home at first, and
7 Barb remained in their car. They
8 were going to try to get Troy to the
9 hospital. And would this have been
10 Punxsutawney Hospital?

11 A. Yes.

12 Q. All right. The same place
13 where he went the last time that he
14 had his episode of depression?

15 A. Yes.

16 Q. And how did you know that they
17 were going to try to get him to the
18 hospital? Did Tim tell you that?

19 A. Yes.

20 Q. Troy went from being happy to
21 sad to mad. Is this during the time
22 you were sitting there with him after
23 he had forgotten what was going on
24 and while Tim was in the room with
25 him?

1 A. Yes.

2 Q. It said he began to throw
3 small items. He wasn't throwing them
4 at anyone, just tossing them in the
5 room. During this period, was Troy
6 standing up and walking around or was
7 he sitting?

8 A. In the beginning he was
9 sitting on the couch next to me. And
10 then he had gotten up.

11 Q. And what kind of items was he
12 throwing?

13 A. An empty soda bottle. Just
14 minor things that wouldn't even hurt
15 anybody if they got hit.

16 Q. What was he saying when he was
17 throwing these items?

18 A. He didn't know what was going
19 on. He didn't want to go to the
20 hospital. At first he didn't know
21 that he was going to the hospital.
22 Tim tried telling him let's go get a
23 pack of cigarettes, let's go down to
24 the store. Anything to get him in
25 the vehicle.

1 Q. Did Troy seem in physical
2 distress at all that you could
3 observe?

4 A. No.

5 Q. He was not overtly sweating or
6 red or anything like that?

7 A. No.

8 Q. Was he ever out of breath?

9 A. No.

10 Q. And prior to this date, did
11 you know whether or not Troy, other
12 than having ulcerative colitis, had
13 any other health problems?

14 A. Not to my knowledge.

15 Q. Tim went outside and called
16 911 on your cell phone and asked for
17 an ambulance, and you said I heard
18 Tim tell the operator that Troy knew
19 Tae Kwan Do?

20 A. Yes.

21 Q. Okay. Did you know that Troy
22 knew these things?

23 A. Yes.

24 Q. Were they hobbies of his?

25 A. Yes.

1 Q. Besides Tae Kwan Do, did he
2 have as a hobby any other marshal art
3 techniques?

4 A. No. He did all that before we
5 got together.

6 Q. All right. Did he ever
7 practice them afterwards?

8 A. No.

9 Q. Did he have any other kind of
10 hobby in terms of boxing or sparring
11 with other folks who studied these
12 marshal arts?

13 A. No.

14 Q. All right. And then going to
15 paragraph 14, you said instead of an
16 ambulance coming, a state police car
17 arrived with two troopers, a younger
18 guy, really tall and stocky, and an
19 older 40s, I take offense at that.

20 A. Sorry.

21 Q. Smaller guy. And they came
22 into my house. Now, number 14, did
23 you understand that there was no
24 request by Tim for police, that he
25 only had requested an ambulance?

1 A. Yes, that's all I knew.

2 Q. Do you know whether Barbara or
3 Tim wanted the police to come?

4 A. No.

5 Q. In the prior incident, was
6 Troy taken by ambulance to the
7 Punxsutawney Hospital?

8 A. Yes.

9 Q. Did the police assist with
10 that call?

11 A. Yes.

12 Q. Which police assisted with
13 that? Was it local or was it the
14 state police?

15 A. I believe it was the state.

16 Q. But were you surprised that
17 state police showed up for this call?

18 A. Yes.

19 Q. Why were you surprised?

20 A. I was surprised because they
21 came before the ambulance.

22 Q. In the prior call, did they
23 come after the ambulance?

24 A. Yes.

25 Q. All right. In the prior call,

1 was Troy combative in any way?

2 A. I don't know. He was just
3 very calm.

4 Q. I'm not talking about this
5 incident, October 18th.

6 A. Right, no.

7 Q. It's the prior?

8 A. Yeah, yeah.

9 Q. Okay. So he was calm on that
10 one. Number 15 says Troy was pissed
11 that the cops were there. The cops
12 kept asking what is wrong. Troy
13 responded I understand now. The
14 younger cop said understand what.
15 Troy responded life. They did not
16 seem at all interested in trying to
17 calm Troy down. The younger cop,
18 Battestilli, had a major attitude and
19 acted like he wanted to kick Troy's
20 ass. He kept saying, hey, Troy, what
21 are we doing here and what are you
22 going to do next.

23 Now, from the time the police
24 entered your residence until the time
25 they actually started to get into a

1 physical scuffle with Troy, do you
2 know how long they were there talking
3 to him?

4 A. I don't recall.

5 Q. Are you able to put any time
6 estimate on that period at all?

7 A. I want to say maybe about 15
8 minutes, 20 minutes.

9 Q. During that period of time,
10 where were you located within the
11 residence?

12 A. In the living room with them.

13 Q. All right. Have they entered
14 from the rear of the residence?

15 A. Yes.

16 Q. All right. Is there a front
17 door?

18 A. Yes.

19 Q. Does the front door enter
20 directly into the living room?

21 A. Yes.

22 Q. All right. Then your mother-
23 in-law drew a diagram of the living
24 room/kitchen area. And it was not
25 easy for her and I'm sure if we had a

1 photograph it would be a lot easier,
2 but would your Counsel be willing to
3 let you make an attempt at drawing a
4 diagram here, just like a very rough
5 outline of the kitchen/living
6 room/hallway?

7 ATTORNEY HAKEN:

8 Okay. That's fine.

9 BY ATTORNEY DONAHOE:

10 Q. Make it big because I have
11 lousy eyes.

12 WITNESS COMPLIES

13 BY ATTORNEY DONAHOE:

14 Q. Thank you.

15 A. You're welcome.

16 Q. I'm looking at this diagram,
17 and it looks like as you walk in the
18 front door of your old residence
19 you'd walk right into the living
20 room?

21 A. Yes.

22 Q. And then to the right of the
23 living room is a dining room?

24 A. Yes.

25 Q. Is the dining room separated

1 by a wall from the living room?

2 A. No.

3 Q. All right. And then it says
4 bar, which is kind of like an opening
5 in the wall from the kitchen to the
6 living room?

7 A. Right.

8 Q. How big's the opening? Does
9 it run the whole distance of the
10 width of the living room or was it a
11 square kind of ---?

12 A. It was just a square.

13 Q. Any idea how big, like three
14 feet by four or anything?

15 A. No, I don't know.

16 Q. All right. Would it be
17 something that people would pass food
18 from the kitchen ---

19 A. Yes.

20 Q. --- into the dining room area
21 with?

22 A. The kitchen to the living
23 room. We just had a counter from the
24 kitchen to the ---

25 Q. To the dining room?

1 A. --- dining room.

2 Q. I see. And then as you walked
3 in the front door, if you didn't kind
4 of bear to the right and went
5 straight, you'd go down a hallway
6 that would lead to the bedrooms; am I
7 correct about that?

8 A. You'd go straight and then
9 you'd have to take a left to go to
10 the hallway to the bedrooms.

11 Q. Very good. And so was there a
12 door that led from the hallway or did
13 it just open into ---?

14 A. It was just open.

15 Q. There was --- I understood,
16 was also a loveseat, a couch, and a
17 television, and a coffee table. And
18 would you be ready to try to draw
19 this in? It's not to scale and it's
20 your best efforts, but it does kind
21 of help a little bit in
22 understanding.

23 WITNESS COMPLIES

24 BY ATTORNEY DONAHOE:

25 Q. Great. And it was a big

1 television across from the couch?

2 A. Yes. It was an entertainment
3 center with a TV inside of it.

4 Q. Great. Coffee table, was that
5 wooden or glass?

6 A. Wooden.

7 Q. So going back to that
8 paragraph 15 on there, how did you
9 know that Troy was pissed that the
10 cops were there?

11 A. Because he kept telling them
12 to get out of his house.

13 Q. Other than just saying get out
14 of my house, did he say anything
15 else?

16 A. I believe he said you don't
17 belong here and this is my house.

18 Q. At any point did he ever say
19 that he was tough or bad and he was
20 going to kick ass?

21 A. No.

22 Q. Okay. Never heard that at
23 all?

24 A. No.

25 Q. All right. Other than him

1 telling the police to get out of his
2 house, did he engage in any other
3 discussion with them?

4 A. Not to my knowledge, no.

5 Q. And at this point in time, he
6 was seated on the couch?

7 A. No, they were standing in
8 front of the entertainment center.

9 Q. And where was Troy? Was he on
10 the couch or was he standing?

11 A. He was standing in front of
12 the entertainment center with them.

13 Q. Okay. He was standing there?

14 A. Yes.

15 Q. Initially when they came in,
16 was he seated at the couch?

17 A. Yes.

18 Q. And was his mom there?

19 A. I believe she was standing in
20 the kitchen.

21 Q. Were you standing in the
22 kitchen?

23 A. At first I was standing in the
24 living room.

25 Q. All right. So she was in the

1 kitchen. You're in the living room.

2 Where was Tim?

3 A. I believe he was behind the
4 couch.

5 Q. In the dining room area?

6 A. Yeah.

7 Q. So there's no break and you
8 could look right from behind the
9 couch?

10 A. Yeah, the dining room actually
11 is over in the corner. That's why I
12 put that there.

13 Q. Got you.

14 A. But it's like this whole area
15 was opened up.

16 Q. Got you. So Tim's sitting on
17 the couch and he was mad that the
18 police were there?

19 ATTORNEY HAKEN:

20 Sorry. You said Tim.

21 BY ATTORNEY DONAHOE:

22 Q. Or, I'm sorry. Troy. I
23 apologize. Troy's sitting on the
24 couch. His mom's in the kitchen. He
25 expresses that he's not happy that

1 the police are there. And they kept
2 asking him what's wrong and he said I
3 understand now. Did he say I
4 understand now?

5 A. Yes.

6 Q. And was he standing up when
7 that happened ---

8 A. Yes.

9 Q. --- or sitting down? And do
10 you know who he said that to?

11 A. He had said it --- he was
12 standing here and the police were
13 standing in front of him. I'm
14 assuming he said it to them.

15 Q. How long was it that they were
16 discussing or talking to each other
17 before Troy said that?

18 A. I don't know. Maybe ten
19 minutes.

20 Q. Do you recall what other ---
21 what else the troopers may have said
22 to Troy during this time prior to the
23 time that Troy said I understand now?

24 A. They really didn't say
25 anything.

1 Q. Did they ever talk to you?

2 A. No.

3 Q. Did they talk to Tim?

4 A. Not to my knowledge.

5 Q. And did they talk to Barbara?

6 A. Not to my knowledge.

7 Q. All right. When you say they
8 did not seem at all interested in
9 trying to calm Troy down, the younger
10 cop, Battestilli, had a major
11 attitude and acted like he wanted to
12 kick Troy's ass, he kept saying, hey,
13 Troy, what are we doing here and what
14 are you going to do next, was there
15 any other behavior on Trooper
16 Battestilli's part that exhibited
17 that he was uninterested in trying to
18 calm Troy down and had a major
19 attitude?

20 A. He was egging him on. He just
21 kept asking him what are you going to
22 do, what are you going to do now.
23 That's all he kept saying. And he
24 just kept getting more aggressive as
25 he said it.

1 Q. What do you mean more
2 aggressive? If you can describe it
3 in more detail.

4 A. He just acted like he was a
5 bad ass. Like if you're going to
6 mess with me, you know, something's
7 going to happen.

8 Q. And how did he act that way?

9 A. I don't know. He just kept
10 saying what are you going to do now.

11 Q. And what would Troy respond?

12 A. He said he wasn't going to do
13 anything and he was telling them to
14 leave.

15 Q. All right. So had Troy
16 regained his sense of where he was
17 and became aware of everything and
18 not confused or unaware of where he
19 was?

20 A. No, he wasn't confused
21 anymore. He knew what was going on.

22 Q. Okay. And then he said I
23 understand now, and they asked him
24 what, and he said the meaning of
25 life?

1 A. Uh-huh (yes).

2 Q. Did that cause you to think
3 either, A, he does know what's going
4 on or, B, he doesn't know what's
5 going on or ---?

6 A. I knew he knew what was going
7 on.

8 Q. All right. Now, had he ever
9 expressed that knowledge about the
10 meaning of life before?

11 A. Yeah. I mean, we've talked
12 about it.

13 Q. Why did he say that to the
14 troopers, if you know?

15 A. I don't know.

16 Q. All right. And what did they
17 say in response?

18 A. They just kept saying what are
19 you going to do now.

20 Q. All right. Did both troopers
21 say that or just Trooper Battestilli?

22 A. To my knowledge, it was just
23 Battestilli.

24 Q. Okay. And he was the ---?
25 Can you describe him, because you say

1 here he --- was he the younger guy?

2 A. That's a hard ---.

3 Q. Well, it just says 14, instead
4 of an ambulance coming, a state
5 police car arrived with two troopers,
6 a younger guy really tall and stocky
7 and an older 40s smaller guy. Who
8 was doing the --- who had the major
9 attitude, the bigger or the smaller?

10 A. I want to say it was the
11 bigger guy. I can't remember.

12 Q. Okay. And was the smaller guy
13 saying anything that you overheard?

14 A. I don't remember.

15 Q. Do you recall how they were
16 dressed?

17 A. In uniform.

18 Q. Do you recall what they looked
19 like?

20 A. I just remember dark hair,
21 short.

22 Q. One short?

23 A. Yeah.

24 Q. One had dark hair?

25 A. No, they both had dark hair,

1 but their hair was short.

2 Q. Oh, I see. Short, dark hair.

3 A. And I know one of them --- one
4 was tall and one was short.

5 Q. Okay. And this back and forth
6 where they said what are you going to
7 do now, what are you going to do next
8 went on for --- you don't know, but
9 you said maybe up to ten minutes?

10 A. Right.

11 Q. All right. And during that
12 time, Troy said I understand now,
13 they said what, he said the meaning
14 of life. Do you know what they said
15 in response?

16 A. I don't remember.

17 Q. All right. At that point,
18 were you still in the living room?

19 A. Yes.

20 Q. All right. And at that point,
21 was Troy still sitting down?

22 A. No, he was standing up talking
23 to them.

24 Q. Okay. Where was his mother?

25 A. In the kitchen.

1 Q. With you. So was she ever on
2 the couch with him?

3 A. Yeah, that was before the
4 police had shown up.

5 Q. I see. But by the time they
6 got there, she was in the kitchen?

7 A. Yes.

8 Q. And Tim was also in the
9 kitchen?

10 A. He was behind the --- standing
11 behind the couch.

12 Q. Yeah, oh, I'm sorry. Yeah,
13 yeah. So we go to 16 that says Troy
14 put his hands on the cops' arms and
15 said let's go outside and talk. Was
16 that one hand on each cop's arm?

17 A. No, it was Battestilli's arm.
18 He just put it right here as if to
19 come on, let's go outside.

20 Q. Okay. Do you remember if it
21 was Battestilli's left or right arm?

22 A. It was this arm, and he was
23 facing this way, so yeah, it was his
24 left arm.

25 Q. Okay. And was Troy facing

1 Trooper Battestilli?

2 A. Yes.

3 Q. And was it his right arm that
4 he put on him?

5 A. Yes.

6 Q. All right. And what did he do
7 then? What did he say to him and
8 what physically did Troy do?

9 A. He just put his hand on his
10 arm and said, come on, let's go
11 outside and discuss this.

12 Q. And you said he did this in a
13 nice way?

14 A. Yes.

15 Q. It seemed like he just wanted
16 to talk to the police away from
17 everyone. Battestilli said no, we're
18 going to talk right here and took
19 Troy's hand off of him?

20 A. Yes.

21 Q. All right. Do you recall them
22 saying anything else at that point?

23 A. No.

24 Q. Then you say Troy then took a
25 swing at the officers. They stepped

1 back and there was no contact. So
2 did Troy immediately take a swing
3 when Battestilli took his arm off of
4 --- took his hand off of --- Troy's
5 hand off his arm?

6 A. Yes.

7 Q. Did Troy swing with his right
8 arm or left, if you remember?

9 A. His right arm.

10 Q. Okay. And at this point,
11 you're in the living room?

12 A. At that point I was in the
13 kitchen.

14 Q. All right. How close to the
15 two of them were you?

16 A. We had the wall between us
17 because I was looking through the
18 bar.

19 Q. So ten feet or so?

20 A. Yeah.

21 Q. And was Troy's mother also
22 there in the kitchen?

23 A. She was standing right next to
24 me to my left.

25 Q. All right. Tim's still in the

1 dining room?

2 A. Yeah.

3 Q. All right. Then number 18
4 says the cop then jumped on and
5 tackled Troy. So prior to the --- or
6 after the swing, there was no contact
7 between the police and ---

8 A. No.

9 Q. --- Troy? Had you ever seen
10 Troy punch anybody before?

11 A. No.

12 Q. All right. Was this a total
13 surprise to you that he swung at
14 them?

15 A. Yes.

16 Q. All right. He swings, and
17 then did both troopers jump on him
18 and tackle him?

19 A. I know Battestilli did. I'm
20 assuming the other guy did too. I
21 don't recall.

22 Q. Okay. And what did you
23 observe the three of them do? What
24 happened?

25 A. They tackled him towards the

1 loveseat, and that's when he hit his
2 head on the bar itself.

3 Q. And when you say bar, do you
4 mean the opening between the kitchen
5 and the ---?

6 A. Yeah, there was a little table
7 kind of thing there where you could
8 sit up there and eat.

9 Q. Oh, okay. Were there stools
10 on the other side ---

11 A. Yes.

12 Q. --- of that table? And the
13 stools were in the kitchen obviously?

14 A. Yes.

15 Q. And then the loveseat was
16 pushed right up to the wall?

17 A. Yes.

18 Q. And the loveseat obviously
19 didn't come all the way up to the
20 bar?

21 A. Right.

22 Q. So he hit his head on that
23 kind of corner?

24 A. Yeah, right on the edge of it.

25 Q. Front of his head or back?

1 A. Right here on his forehead.

2 Q. Okay. You're saying right at
3 the top of his forehead?

4 A. Yes.

5 Q. And did you see that impact
6 occur?

7 A. Yes, I did. I was right there
8 in front of it.

9 Q. And then what did you observe
10 after he hit his head?

11 A. His head bounced off and that
12 was when Battestilli was on him, and
13 the other cop must have jumped on him
14 or something because he had bounced
15 his head another time off of it.

16 Q. Okay.

17 A. And that's when they slid down
18 onto the couch.

19 Q. All right. And did you see
20 them slide onto the couch?

21 A. Yes.

22 Q. Where were each one of them,
23 if you recall? I know it's probably
24 a --- was it a chaotic scene?

25 A. Yes.

1 Q. All right. What do you recall
2 about the three bodies there? Who
3 was where?

4 A. Troy was on the bottom.
5 Battestilli was on him, and the other
6 cop was on him.

7 Q. Okay. So Battestilli's on
8 Troy. Is Troy facedown on the
9 loveseat?

10 A. Yes.

11 Q. And Battestilli's on top of
12 him?

13 A. Yes.

14 Q. And then Johnson is the other
15 trooper. Did you remember that name
16 or am I just injecting that into your
17 memory?

18 A. I didn't remember the name.

19 Q. Okay. Assuming his name's
20 Johnson, he would be the third guy,
21 and he's on the top of them?

22 A. Yes.

23 Q. All right. So it's kind of
24 like a --- three layers of people?

25 A. Yes.

1 Q. Were all of them on the
2 loveseat?

3 A. Their upper body was on the
4 loveseat and their lower part was on
5 the floor.

6 Q. Okay. So the loveseat's
7 pretty --- probably only about two
8 feet deep; correct?

9 A. Yes.

10 Q. So he's kind of like got his
11 --- where's Troy's head? Up against
12 the back of the loveseat or is it
13 right on the cushion of the loveseat?

14 A. It was on the cushion.

15 Q. All right. So his body's
16 sticking out kind of like in a --- in
17 a perpendicular or corner-type thing.
18 And the other two are right on top of
19 him?

20 A. Yes.

21 Q. And what did you hear them
22 say?

23 A. I heard Battestilli tell the
24 other police officer to tase him.

25 Q. Okay. And did they do any

1 damage to the couch that's next to
2 them, or did they knock it over or
3 anything?

4 A. No, no.

5 Q. How about the coffee table?
6 Did they knock that over?

7 A. It didn't get knocked over.
8 It got pushed aside.

9 Q. Okay. And how long were they
10 struggling before you heard him say
11 get the Taser or Taser him?

12 A. It was just a couple of
13 minutes.

14 Q. All right. And what did you
15 observe about the Taser then? What
16 happened after Battestilli said Taser
17 him?

18 A. He tried tasering him through
19 his clothes.

20 Q. All right. Now, how did he
21 try to taser him?

22 A. He had held it up around his
23 back area when he was trying to ---.

24 Q. Have you ever seen a Taser
25 before this?

1 A. On TV, yes.

2 Q. Okay. On TV. In real life,
3 as we say, had you ever seen one
4 before?

5 A. No.

6 Q. All right. What do you recall
7 about the trooper's use of this
8 particular Taser?

9 A. He just said taser him, and it
10 wasn't going through his clothes to
11 his skin.

12 Q. Was he holding it right to his
13 clothes?

14 A. I don't recall that.

15 Q. All right. How do you know it
16 wasn't going through his clothes to
17 his skin?

18 A. Because Battestilli told him.

19 Q. Okay. What did he say?

20 A. He said it's not hitting skin.
21 It's not hitting, you know,
22 contacting any skin.

23 Q. All right. So then what did
24 the trooper do?

25 A. He told the other guy to pull

1 up his shirt.

2 Q. And what did you observe?

3 A. He pulled up his sweatshirt,
4 tried tasing him again to go
5 through the tee-shirt he was wearing,
6 and he said it's still not working.
7 And he said pull up his other shirt,
8 and that's when he tasered him two
9 more times.

10 Q. All right. Now, where's
11 Battestilli at this point?

12 A. He was holding Troy down.

13 Q. All right. Was he still on
14 top of him?

15 A. Yes.

16 Q. And then the other guy, was he
17 still on top of Battestilli?

18 A. No.

19 Q. All right. Did he stand up?

20 A. Yes.

21 Q. Okay. So he stood up. Did
22 you see him --- did you see where he
23 got the Taser from?

24 A. No, I didn't.

25 Q. All right. Do you recall

1 anything about how the Taser looked?

2 A. No. Just afterwards.

3 Q. Did you see him initially try
4 to taser the --- try to taser Troy?

5 A. No.

6 Q. All right. Was it your
7 observation that these --- that this
8 trooper, and this would have been
9 Johnson, not Battestilli; right?
10 That Johnson was applying the Taser
11 right to Troy's body, to his skin?

12 A. The last two times, yes.

13 Q. Before that, it was going ---
14 applied directly to his shirt?

15 A. Yes.

16 Q. And it wasn't going through?

17 A. Right.

18 Q. All right. And at this point,
19 Battestilli is holding Troy down?

20 A. Yes.

21 Q. What did you observe about
22 Battestilli? Where were his hands
23 and body?

24 A. He was kneeling on the floor
25 and he had --- he was trying to get

1 Troy's hands behind his back.

2 Q. Okay.

3 A. And when he did get his hands
4 behind his back, that's when he had
5 told him to taser him.

6 Q. Okay. How was he able to hold
7 Troy's hands behind Troy's back? How
8 was Battestilli able to do that?

9 A. He just had both of his hands
10 on his hands.

11 Q. And with his own physical
12 strength, he was able to hold his ---

13 A. Yes.

14 Q. --- hands back there?
15 Apparently when the shirt came all
16 the way up, there were one or two
17 applications of the Taser to his
18 body. Where on his body? Do you
19 know?

20 A. I believe one of them was his
21 back and I didn't observe it, but I
22 heard it. The other was his thigh.

23 Q. Then did you observe the
24 struggle continue or this
25 altercation?

1 A. Yes.

2 Q. What did you observe then
3 after the last tasing?

4 A. After the last tasing, Troy
5 said I'm done. And he says I'm not
6 going to fight anymore, and that's
7 when they handcuffed him.

8 Q. All right. Now, was he still
9 on the loveseat?

10 A. Yes, when they got the cuffs
11 on him.

12 Q. All right. And so they
13 handcuffed him. And then what did
14 they do with him?

15 A. They jerked him off the couch
16 and put him on his back on the floor
17 and shackled his feet.

18 Q. Okay. Now, he was on his
19 back. Were his hands behind his
20 back?

21 A. Yes.

22 Q. All right. Was he saying
23 anything?

24 A. No.

25 Q. All right. And then they

1 shackled his feet together?

2 A. Yes.

3 Q. Who did that?

4 A. I don't recall.

5 Q. Do you know where the shackles
6 came from?

7 A. No.

8 Q. All right. How long did it
9 take after Troy said, okay, I'm not
10 going to fight anymore? Was that
11 right after the last taser?

12 A. Yes.

13 Q. Then he said, okay, I'm not
14 going to fight anymore. And then did
15 they immediately handcuff him behind
16 his back?

17 A. Yes.

18 Q. And then they immediately
19 rolled him onto his back onto the
20 floor?

21 A. Yes.

22 Q. Were the shackles there at
23 that point?

24 A. I didn't see them.

25 Q. All right. How long did it

1 take for them to shackle his feet?

2 A. I didn't even see. I don't
3 know.

4 Q. Did you hear Tim say anything
5 to the troopers at that point?

6 A. At that point, no.

7 Q. All right. Did you observe
8 Tim help the troopers at all hold
9 Troy's feet?

10 A. No.

11 Q. All right. And then they
12 shackled his feet. And then what
13 happened?

14 A. I can't remember which officer
15 it was, but he put his knee on his
16 chest to hold him down.

17 Q. All right. He put his knee on
18 the top of his chest as he was lying
19 on his back?

20 A. Yes.

21 Q. All right. So did he kneel
22 next to him?

23 A. He had one knee on his chest
24 and one on the floor, yes.

25 Q. Okay. And you don't know

1 which trooper that was?

2 A. I want to say it was the
3 younger one, the Johnson because I
4 believe Battestilli went outside to
5 call to ask where the ambulance was.

6 Q. I see. And Johnson had his
7 knee on his chest. And how long did
8 he keep his knee on his chest?

9 A. Until the paramedics arrived.

10 Q. How long do you think that
11 was?

12 A. I don't know. Ten (10), 15
13 minutes maybe.

14 Q. Okay. During that period of
15 time, where were you?

16 A. I was in the kitchen with
17 Barbara.

18 Q. All right. Where was Tim?

19 A. Standing behind the couch.

20 Q. All right. And was there any
21 conversation going on between anyone
22 at that time?

23 A. Yes. All three of us had said
24 that it looked like he wasn't
25 breathing.

1 Q. All right. How long was it
2 that Johnson had his knee on Troy's
3 chest before someone said he's not
4 breathing?

5 A. It wasn't very long.

6 Q. Okay. More than a minute?

7 A. Probably about two, three
8 minutes.

9 Q. All right. And someone said
10 he's not breathing. Who said that?

11 A. Tim. Tim stated it and we
12 both observed that he wasn't.

13 Q. All right. And when you said
14 that, what happened? When you
15 observed that and Tim said that, what
16 happened?

17 A. The cop had said yes, he is
18 breathing.

19 Q. All right.

20 A. And that's when I had come
21 around from the kitchen into the
22 living room area right where the
23 hallway is to go down to the
24 bedrooms. And I stood right there
25 and watched, and he wasn't breathing.

1 Q. All right. Now, did the cop
2 still have his knee on Troy's chest
3 at that time?

4 A. At that point when I came
5 around, his knee was actually on his
6 neck.

7 Q. Okay. So did you observe him
8 move his knee from his chest to his
9 neck?

10 A. No.

11 Q. All right. So you came around
12 and now the trooper is kneeling there
13 with his knee on Troy's neck. And
14 what did you say at that point?

15 A. I said to him he's not
16 breathing. Are you going to do CPR?

17 Q. And then what happened?

18 A. He just said he's breathing.
19 And then, like I said, I heard
20 Battestilli out on the porch. He
21 says where's the F-ing ambulance,
22 he's not breathing.

23 Q. Okay. And the other trooper
24 kept his knee on the neck during that
25 period of time?

1 A. (Indicates yes.)

2 Q. How long did that last where
3 he had his knee on the neck?

4 A. Until the ambulance came.

5 Q. How many minutes?

6 A. I don't know.

7 Q. Okay. You don't care to put
8 any time frame on it at all?

9 A. No.

10 Q. All right. The ambulance
11 arrived. What did you observe about
12 their arrival?

13 A. They came in and said that
14 he's not resisting, you can uncuff
15 him, and they said no, he resisted.

16 Q. Where was Johnson's knee at
17 this point?

18 A. When they had come in, he had
19 taken --- he was completely away from
20 Troy. He was actually standing up.

21 Q. How long before they arrived
22 did he get up?

23 A. As soon as they were walking
24 in the door.

25 Q. All right. So they did not

1 remove the cuffs. And did they move
2 the cuffs from behind his back to his
3 front?

4 A. No.

5 Q. All right. They kept the
6 cuffs behind his back?

7 A. Yes.

8 Q. What did the EMS folks do?

9 A. They tried getting him to
10 breathe. They did CPR. They kept
11 telling the cops that they can take
12 the cuffs off, he's not resisting,
13 he's not even conscious.

14 Q. And how long did the CPR
15 efforts continue?

16 A. Probably about 10, 15 minutes
17 before they hauled him away.

18 Q. How did they get him out of
19 the house? On a board?

20 A. On a board, yeah.

21 Q. All right. At that point,
22 were his hands behind his back or in
23 front?

24 A. No, they're still behind his
25 back.

1 Q. All right. And they took him
2 to an ambulance?

3 A. Yes.

4 Q. Did they have oxygen on him?

5 A. Yes.

6 Q. Did they use a bag to try to
7 resuscitate him, do you know?

8 A. I think so.

9 Q. They put him in the ambulance.
10 And did you get in the ambulance with
11 Troy?

12 A. No.

13 Q. Did any family member get into
14 it with him?

15 A. No.

16 Q. All right. And they took him
17 to Punxsutawney Hospital?

18 A. Yes.

19 Q. Did you stay at the house for
20 any period of time? You knew he was
21 going to Punxsy?

22 A. Yes.

23 Q. Did you stay at the house for
24 any period of time or did you guys
25 just get in your cars and go to the

1 hospital too?

2 A. Barbara and Tim got right in
3 their car and went, and I stayed
4 behind to get the children together.

5 Q. Right. During that period of
6 time, did the police say anything
7 further to you, state troopers?

8 A. No.

9 Q. Did the EMS personnel say
10 anything about the incident to you?

11 A. No.

12 Q. Did Tim say anything to you
13 about what happened?

14 A. No, he just said that we're
15 going to go to the hospital. I said,
16 all right, I'll get the kids together
17 and I'll meet you there.

18 Q. And did Barbara say anything
19 about what she observed to you while
20 she was at the scene?

21 A. No.

22 Q. I'm going to go back to the
23 statement for a second. Now, on 21,
24 you say Battestilli said to the older
25 cop are you okay, and the older cop

1 said, yeah, I'm okay, I hit my head.
2 You said, no, you didn't, it was
3 Troy's head that hit?

4 A. Yes.

5 Q. Do you recall saying that?

6 A. Yes, I do.

7 Q. Do you know what the trooper
8 said in response?

9 A. No.

10 Q. All right. Twenty-two (22),
11 you said Troy kept his hands under
12 him and Battestilli said I'm going to
13 taser him. He tried, but couldn't
14 because Troy had on two shirts.
15 Battestilli asked the other cop to
16 lift Troy's shirt, which he did.
17 Battestilli tasered Troy. Troy
18 screamed out in pain. Do you
19 remember that?

20 A. Yes.

21 Q. Battestilli said I'm going to
22 hit him again. You said he held the
23 Taser against the --- Troy for what
24 seemed like 10 seconds, and then
25 again for 30. I believe Troy was

1 tasered at least three times like
2 this. Then Battestilli tasered Troy
3 on his neck. Did you see that
4 happen?

5 A. No, I didn't.

6 Q. How do you know it happened?

7 A. I thought he --- I don't know.
8 They just kept tasering him.

9 Q. Then you said Troy had stopped
10 resisting. Troy pulled his hands out
11 and he was cuffed?

12 A. Yes.

13 Q. Troy was facedown on the couch
14 the entire time he was being tasered?

15 A. Yes.

16 Q. Okay. And Battestilli was on
17 top of him and Johnson then was the
18 one that got off and tasered him?

19 A. I thought it was until I seen
20 this. I mean, it's been 12 years.

21 Q. Okay. Troy was then pulled
22 off the couch and put on his back.
23 The older cop put his knee on Troy's
24 chest while Battestilli said he was
25 going to get shackles for Troy's leg.

1 Do you remember that happening? If
2 you don't, that's fine.

3 A. Yeah, now that I'm looking at
4 this, yeah, because I know he didn't
5 have the shackles on him when he came
6 in.

7 Q. All right. And then you said
8 I believe Troy was tasered again
9 after he was handcuffed because he
10 was moving his legs. Do you recall
11 that happening?

12 A. Yes.

13 Q. Do you recall Troy moving his
14 legs around?

15 A. Yes.

16 Q. All right. What do you recall
17 about that?

18 ATTORNEY HAKEN:

19 Objection. It's pretty
20 vague. What do you mean, what
21 do you recall about that?

22 BY ATTORNEY DONAHOE:

23 Q. On 25 where you said I believe
24 Troy was tasered again after he was
25 handcuffed because he was moving his

1 legs, do you recall what fashion he
2 was moving his legs at that point
3 when he was handcuffed?

4 A. No. I mean, he wasn't kicking
5 or anything. He was just wriggling
6 his legs.

7 Q. And where did they taser Troy
8 on his body, if you recall? If you
9 don't, that's fine.

10 A. The last one I don't recall.
11 I thought it was his thigh to get him
12 to stop moving his legs.

13 Q. All right. Now, then 26 said
14 Tim said I don't think he's
15 breathing?

16 A. Yes.

17 Q. The older cop lifted Troy's
18 shirt and said yeah, he's breathing.
19 Tim responded no, he's not breathing.
20 I could tell too that Troy wasn't
21 breathing. So you and Tim were in
22 the living room at this point?

23 A. Yeah, I was standing in the
24 hallway area.

25 Q. And the older cop, you mean

1 not Battestilli?

2 A. Right.

3 Q. All right. And he lifted his
4 shirt? All right.

5 A. Yeah, he just lifted it to
6 show us his chest.

7 Q. Then Battestilli returned and
8 the other cop, the older cop,
9 whispered to him this guy's not
10 breathing. Battestilli did not help
11 Troy but put the shackles on Troy's
12 legs?

13 A. Yes.

14 Q. All right. Tim said why do
15 you still have your knee on him? The
16 cop said we don't want to take a
17 chance he's going to resist again.
18 Tim said he can't resist, he is
19 handcuffed and shackled?

20 A. Yes.

21 Q. And that was Johnson who had
22 his knee on him, not Battestilli?

23 A. I believe so. I don't
24 remember.

25 Q. You said Battestilli then

1 walked casually out the back porch
2 and with the door open made a phone
3 call. I heard him say where's the F-
4 ing ambulance, this guy's not
5 breathing, we need it here now. That
6 was from the back porch?

7 A. Yes.

8 Q. Where were you?

9 A. On the diagram there?

10 Q. Yeah.

11 A. The hallway coming from the
12 back porch, ---

13 Q. Yes.

14 A. --- that's where my laundry
15 room was.

16 Q. Okay.

17 A. And then I was standing right
18 there on the corner, right where your
19 pen is.

20 Q. Right. How far was that from
21 the back door?

22 A. Not very far. I mean, it was
23 like five steps.

24 ATTORNEY HAKEN:

25 Can I offer a very

1 brief break? Will you
2 appreciate that or do you want
3 to just get through this?

4 A. No, I just want to get through
5 this.

6 ATTORNEY HAKEN:

7 All right. I just
8 wanted to make sure that was
9 an option.

10 BY ATTORNEY DONAHOE:

11 Q. Number 30 says Battestilli
12 returned and said the ambulance is on
13 its way. While this was --- and 31
14 says while this all was going on, the
15 older cop had slid his knee up and
16 was now leaning on the left side of
17 Troy's neck. They were on his neck
18 for what seemed like about ten
19 minutes. They were on his chest for
20 about five with their knee. The
21 older cop finally stood up and he and
22 Battestilli just stood there. They
23 didn't say or do anything, and Barb
24 asked where's the ambulance. And the
25 next one is when the paramedics

1 arrived, I thought they seemed
2 shocked at what they saw. And what
3 caused you to make that observation?

4 A. Because they asked why is he
5 still cuffed and shackled when he's
6 not even resisting, he's not moving?

7 Q. They said ---?

8 A. He's unconscious.

9 Q. Okay. Anything else?

10 A. No, not that I remember.

11 Q. All right. Then next
12 paragraph, 34, the paramedics ask the
13 cops to remove the handcuffs. The
14 cops refused. Battestilli said he
15 resisted. The paramedics said he's
16 unconscious, he can't resist.
17 Battestilli said I don't care?

18 A. Yes.

19 Q. All right. During the entire
20 episode, Barb and Tim and I were in
21 the living room or standing at the
22 edge of the living room in the
23 doorway of the hall kitchen?

24 A. Uh-huh (yes).

25 Q. All right. So that's what you

1 observed. And then you didn't go to
2 the hospital until a little bit later
3 after you ---?

4 A. I left maybe 15 minutes after
5 they did.

6 Q. All right. When you got to
7 the hospital, were the troopers
8 there?

9 A. Yes.

10 Q. Did you speak to them at all
11 then?

12 A. No.

13 Q. Did you overhear them say
14 anything about the incident?

15 A. No.

16 Q. Did you speak to the doctors?

17 A. Yes, I did.

18 Q. Did the doctors say anything
19 to you about what had happened to
20 Troy?

21 A. I don't remember, no.

22 Q. All right. Did you overhear
23 Tim or Barb talk about the incident
24 while you were at the hospital?

25 A. No.

1 Q. Did you overhear the doctors
2 talk to Barb or Tim about the
3 incident?

4 A. No.

5 Q. Did you overhear the troopers
6 talk to Barb or Tim?

7 A. No.

8 Q. All right. Did you overhear
9 any other state police personnel
10 while you were at the hospital?

11 A. No.

12 Q. All right. Afterwards, did
13 any investigators from the police
14 contact you to get a statement from
15 you?

16 A. Someone had come over in the
17 waiting room before we were allowed
18 in to see Troy.

19 Q. All right. Did you speak to
20 that person?

21 A. No.

22 Q. Did Tim?

23 A. Yes, he did.

24 Q. And did Barbara?

25 A. She started to and Tim stopped

1 her.

2 Q. All right. Do you know why
3 Tim stopped her?

4 A. Because he said we were going
5 to get a lawyer.

6 Q. And did he have any further
7 discussion in that regard?

8 A. No, he just said if you want
9 to speak to us when we have a lawyer,
10 you can speak to them.

11 Q. And did anybody else in your
12 family cooperate with the police in
13 describing the incident until you
14 retained the lawyer?

15 A. No.

16 Q. Have you heard subsequent to
17 the evening when this happened
18 whether either of the troopers
19 involved had made any other
20 statements about this incident?

21 A. Not to my knowledge, no.

22 Q. Have you heard that anybody
23 else has any information about this
24 incident other than the folks who
25 were there and saw it?

1 A. No.

2 Q. Did anybody ever talk to
3 Troy's doctor after this occurred
4 about what happened?

5 A. I don't know.

6 Q. Subsequent to this, what
7 happened with Tim? Do you recall
8 that he was initially arrested at
9 Walmart for pulling Mucinex off the
10 shelves?

11 A. I don't know anything about
12 that.

13 Q. All right. Do you know what
14 happened to Tim with respect to his
15 death?

16 A. I had heard from Barbara, yes.

17 Q. What did Barbara tell you?

18 A. He had a heart attack.

19 Q. Did she say why?

20 A. Because he wasn't taking his
21 insulin. He was diabetic.

22 Q. All right. Anything further
23 about him having taken any drugs or
24 overdose of drugs?

25 A. No.

1 Q. Subsequent to this incident
2 occurring, did you ever talk to Tim
3 or Barbara about Troy's use of
4 Mucinex that day?

5 A. No, not really.

6 Q. Did the doctors ever talk to
7 you about the cause of Troy's death?

8 A. They said it was suffocation.

9 Q. All right. And who told you
10 that?

11 A. I don't even know the doctor's
12 --- it was a doctor in Pittsburgh.

13 Q. All right. Do you know if he
14 was the coroner?

15 A. No.

16 Q. All right. Did you talk to
17 him on the phone?

18 A. No, I talked to him in person.

19 Q. Where were you when it
20 happened?

21 A. At the hospital saying our
22 goodbyes.

23 Q. All right. That night?

24 OFF RECORD DISCUSSION

25 A. At the hospital saying our

1 goodbyes.

2 BY ATTORNEY DONAHOE:

3 Q. You mean that night or the
4 next day, the following day?

5 A. It was a few days later.

6 Q. A few days later. And so you
7 spoke to a doctor in person there at
8 --- was it Presbyterian Hospital,
9 UPMC-Presbyterian?

10 A. I don't remember the name. I
11 thought it was Allegheny, but I'm not
12 sure.

13 Q. Okay. It might have been
14 Allegheny General. I'm sorry. I
15 think it was. I apologize. Tell me
16 the circumstances of this doctor
17 coming in and telling you that Troy
18 died of suffocation.

19 A. I asked him. I said there's
20 nothing you can do? And he said he
21 had --- if he had lived through it,
22 he would have been a vegetable
23 because of the hitting of the head.
24 And they saw trauma to his neck area.

25 Q. And was this in connection

1 with a request to remove life support
2 from Troy?

3 A. I don't know. I was just
4 sitting there asking the doctor, you
5 know, isn't there anything else you
6 can do.

7 Q. Where were you sitting?

8 A. We were in an off waiting
9 room.

10 Q. Okay. And this was like two
11 days after his initial admission to
12 Allegheny General?

13 A. Something like that, yeah.

14 Q. And a doctor came out. Did
15 you understand what role this doctor
16 was playing in the care of Troy?

17 A. I believe he was one of the
18 best doctors there. He ran numerous
19 tests on him.

20 Q. So he was the doctor who was
21 essentially in charge of Troy's care?

22 A. I think so.

23 Q. All right. Do you recall
24 anything about his appearance or
25 look?

1 A. He had dark hair. That's
2 about it. I don't remember. Small
3 guy.

4 Q. Did you recall his name?

5 A. No.

6 Q. Was he American? Was he
7 foreign country origin? Did he speak
8 with an accent? Do you recall any of
9 that?

10 A. I believe he was an American.

11 Q. All right. And when he came
12 out and introduced himself to you or
13 you talked to him, did he describe to
14 you or relate to you the purpose of
15 the conversation you had with him?

16 A. He just wanted to let us know
17 everything he did for Troy to try
18 and, you know, save him.

19 Q. What did he say that he had
20 done?

21 A. I don't know. He just rambled
22 all these medical terms.

23 Q. And who was there also with
24 you?

25 A. My son Joshua. And I believe

1 Tim was there with us, too. I can't
2 remember, though.

3 Q. How about Barbara? Was she
4 there?

5 A. No, I think Barbara stayed
6 home that day.

7 Q. Okay. So had you been coming
8 in from Punxsutawney every day?

9 A. No, we just came in that day
10 because the doctor said to come say
11 goodbye.

12 Q. All right. And Barbara did
13 not come with you?

14 A. No, she was already there
15 before.

16 Q. All right. She was there
17 before. Did Barbara relay to you
18 what the doctor said to her about the
19 cause of Troy's death?

20 A. She said it's the same thing
21 the doctor did, brain hemorrhage and
22 suffocation.

23 Q. Okay. So the doctor said
24 brain hemorrhage and suffocation.
25 And the doctor said it was from

1 hitting his head on the table?

2 A. Yeah.

3 Q. All right. When Troy hit his
4 head on the table, did it make him
5 unconscious?

6 A. No, he was still alert.

7 Q. Was he bleeding?

8 A. No.

9 Q. Did he have a mark on the top
10 of his forehead?

11 A. Yes.

12 Q. When that doctor talked to you
13 that day, did he mention the Taser as
14 a cause of the death?

15 A. No, he didn't say anything.

16 Q. Did he mention the ingestion
17 of Mucinex as a cause of death?

18 A. No.

19 Q. Did he mention Troy's heart
20 condition as a cause of death?

21 A. No.

22 Q. As far as this guy was
23 concerned who was the lead, I guess,
24 neurosurgeon or whatever in charge of
25 his care, the whole thing was due to

1 him hitting his head and suffocating?

2 A. That's what he said to me.

3 ATTORNEY DONAHOE:

4 Okay. All right. I
5 don't think I have any other
6 questions.

7 ATTORNEY CORRADO:

8 I think we're okay,
9 too.

10 ATTORNEY DONAHOE:

11 Okay.

12 VIDEOGRAPHER:

13 This deposition has
14 concluded.

15 * * * * *

16 VIDEOTAPED DEPOSITION CONCLUDED AT

17 12:59 A.M.

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CLEARFIELD)

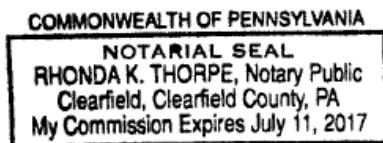
3
4 CERTIFICATE

5 I, Rhonda K. Thorpe, a Notary Public
6 in and for the Commonwealth of Pennsylvania, do
7 hereby certify:

8 That the witness whose testimony
9 appears in the foregoing deposition, was duly
10 sworn by me on said date and that the
11 transcribed deposition of said witness is a
12 true record of the testimony given by said
13 witness;

14 That the proceeding is herein recorded
15 fully and accurately;

16 That I am neither attorney nor counsel
17 for, nor related to any of the parties to the
18 action in which these depositions were taken,
19 and further that I am not a relative of any
20 attorney or counsel employed by the parties
21 hereto, or financially interested in this
22 action.



Rhonda K. Thorpe
Court Reporter

EXHIBIT D-4

Deposition of Steven Johnson

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

BARBARA J. WINGARD, *
individually and as *
Administratrix of *
the Estate of TROY *
ROBERT LEE *
HOOFTALLEN, *

Plaintiff * Case No.

vs. * 2:12-cv-01500

GUY A. BATTLESTILLI; * District Judge
STEVEN E. JOHNSON; * Cathy Bisson
PENNSYLVANIA STATE * JURY TRIAL
POLICE; COMMONWEALTH * DEMANDED
OF PA; TASER® *
INTERNATIONAL, INC.; *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF

STEVEN JOHNSON

May 5, 2014

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by the certifying agency.

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VIDEOTAPED DEPOSITION
OF
STEVEN JOHNSON, taken on behalf of
the Plaintiff herein, pursuant to the
Rules of Civil Procedure, taken
before me, the undersigned, Rhonda K.
Thorpe, a Court Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania, at the offices of
Jefferson County Commissioners
Office, 155 Main Street, #202, Second
Floor, Brookville, Pennsylvania, on
Monday, May 5, 2014, beginning at
1:30 p.m.

A P P E A R A N C E S

TAMARA J. HAKEN, ESQUIRE

SUSAN A. CORRADO, ESQUIRE

Boyle Litigation

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IDENTIFIED

One

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OBJECTION PAGE

ATTORNEY

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P R O C E E D I N G S

VIDEOGRAPHER:

My name is Sarah Dick.

I'm an employee of Boyle
Litigation which is located at
4650 Trindle Road, Suite 102,
Camp Hill, Pennsylvania,
17011. This deposition is
being recorded on Monday, May
5th, 2014, at 1:30 p.m. in the
small conference room of the
Jefferson County Commissioners
Office located at 155 Main
Street, Brookville, PA, 15825.
This deposition is being
filmed in connection with the
case of Barbara Wingard, et
al., v. Pennsylvania State
Police, et al., U.S. District
Court for the Western District
of Pennsylvania, Docket Number
12-cv-01500. The witness in
this deposition is Steven
Johnson. This deposition is

1 being videotaped on behalf of
2 the Plaintiff.

3 COURT REPORTER:

4 You can raise your
5 right hand, please.

6 -----

7 STEVEN JOHNSON, HAVING FIRST BEEN
8 DULY SWORN, TESTIFIED AS FOLLOWS:

9 -----

10 ATTORNEY CORRADO:

11 This deposition is
12 being taken pursuant to the
13 federal rules of civil
14 procedure.

15 EXAMINATION

16 BY ATTORNEY CORRADO:

17 Q. Trooper Johnson, could you
18 please state your full name and spell
19 your last name for the record?

20 A. Steven Eric Johnson, and
21 that's Steven with a V.

22 J-O-H-N-S-O-N.

23 Q. Thank you.

24 A. Uh-huh (yes).

25 Q. My name is Susan Corrado. To

1 my right is Tamara Haken.

2 A. Uh-huh (yes).

3 Q. We're representing the
4 Plaintiffs in this action. As you
5 know, we're here today to take your
6 deposition. And I just want to go
7 over some deposition instructions
8 quickly if you don't mind.

9 A. Okay.

10 Q. You were placed under oath.

11 A. Uh-huh (yes).

12 Q. You're expected to answer
13 truthfully. The court reporter's
14 going to take down everything that
15 you say so if you would provide your
16 responses verbally instead of, you
17 know, a shrug of the shoulders and
18 uh-huh ---

19 A. Uh-huh (yes).

20 Q. --- or a nodding of the head.
21 I'm going to ask for you to wait
22 until I'm finished with my question
23 before you give a response.

24 A. Okay.

25 Q. And in turn, I'll wait for you

1 to finish before I ask you another
2 question so the court reporter can
3 take down everything accurately.

4 A. Okay.

5 Q. My questions are not designed
6 to trick you. I'm just here to get
7 the facts and to get your knowledge
8 regarding the case. And while I
9 don't want you guessing at any
10 answers, if you have a reasonable
11 estimate or somewhat of a
12 recollection of something, I'd like
13 to know about that.

14 You're represented by Counsel
15 today. If at any time during this
16 deposition you feel a need to have a
17 conference with your Counsel, please
18 let me know. The only thing I ask is
19 that you please finish the question
20 that's pending before we break to
21 speak to your Counsel.

22 A. Okay.

23 Q. If I could just start with a
24 few background questions. Trooper
25 Johnson, and we will keep this

1 confidential, could I have your
2 address please?

3 A. Home address?

4 Q. Yes, please.

5 A. 470 Madison Avenue,
6 Brookville, Pennsylvania.

7 Q. And how long have you been
8 there?

9 A. Seven years.

10 Q. Okay. And where did you live
11 prior to that?

12 A. Still here in Brookville.

13 Q. Okay. And what is your age?

14 A. Oh, goodness, 45.

15 Q. Okay. And are you still
16 currently employed by the
17 Pennsylvania State Police?

18 A. Yes.

19 Q. Okay. And how long have you
20 been there?

21 A. Currently, 12 and a half
22 years.

23 Q. Okay. And what is your
24 current rank?

25 A. Trooper first class.

1 Q. Trooper first class. And when
2 did you attain trooper first class?

3 I understand prior to that it's
4 trooper and then it's trooper first
5 class?

6 A. Correct, right. October 1st.

7 Q. Of this year?

8 A. Last year.

9 Q. Last year, okay. And what
10 does that involve? What is your
11 general duties as trooper first
12 class?

13 A. Trooper first class is pretty
14 much the same as trooper. The
15 difference is it just signifies that
16 you have 12 years of service in.
17 Generally you're more senior. That
18 allows the younger troopers that have
19 questions or whatever, they can ---
20 you know, you're someone that they
21 can go to for help type of stuff.

22 Q. Okay. So that status is
23 attained through time of service?

24 A. Yes, longevity, yes.

25 Q. Okay. And what did you do

1 prior to becoming a state trooper?

2 A. I worked at a plant,
3 manufacturing plant.

4 Q. Okay. And what plant was
5 that?

6 A. Beverage Air Corporation.

7 Q. Okay. And what did you do for
8 them?

9 A. Multiple things. I sheered
10 metal, bent metal, made parts,
11 assembled coolers.

12 Q. Okay. And how long were you
13 there?

14 A. Oh, my goodness. Since 1995,
15 so about six years.

16 Q. Okay. Have you ever been the
17 plaintiff or a defendant in a
18 lawsuit?

19 A. No.

20 Q. Okay. Have you had any
21 allegations of excessive force made
22 against you?

23 A. No.

24 Q. Okay. Have you ever had your
25 deposition taken before?

1 A. No.

2 Q. Okay. Did you review any
3 information or documents in
4 preparation for today's deposition?

5 A. Yes.

6 Q. What did you review?

7 A. The incident report.

8 Q. Okay.

9 A. And also the general
10 investigation report, the IED
11 investigation.

12 Q. Okay. And other than your
13 attorney, did you speak to anyone in
14 preparation for this deposition?

15 A. No.

16 Q. I want to begin by training,
17 your training, with the state police.
18 Tell me about that. I understand the
19 facility's in Hershey, Pennsylvania;
20 is that correct?

21 A. Yes.

22 Q. Okay. And how long of a time
23 period is that?

24 A. Twenty-seven (27) weeks, I
25 believe, it is.

1 Q. Twenty-seven (27) weeks, okay.
2 And can you just give me in a few
3 sentences generally what the training
4 entails?

5 A. Physical fitness, study of
6 traffic, law, study of criminal law,
7 how to shoot, that type of stuff.

8 Q. Okay. And what type of
9 weapons are you trained on?

10 A. Currently?

11 Q. At the time and then
12 subsequent to that.

13 A. Oh, my goodness. What did we
14 have at the time?

15 Q. I'm sure there's a handgun?

16 A. There's a pistol, but we have
17 changed since then.

18 Q. Right, right, right.

19 A. I'm not sure if it was the ---
20 I believe it was the Glock 45 GAP was
21 the pistol we had at the time.

22 Q. Uh-huh (yes).

23 A. And we had an AR rifle. I'm
24 trying to think of what the --- I
25 can't remember what the numbers were

1 for it. And we also had a Remington
2 870 shotgun.

3 Q. Okay.

4 A. And I believe there was a
5 Remington 1187 shotgun we were
6 trained on.

7 Q. All right. And what about a
8 machine gun?

9 A. No.

10 Q. No MP5s?

11 A. No.

12 Q. Okay. What about pepper
13 spray?

14 A. Yes.

15 Q. Okay. And baton?

16 A. May I clarify? The pepper
17 spray is different now than it was at
18 the time.

19 Q. You certainly can.

20 A. Yeah. It was different pepper
21 spray then. Then it had -- it was
22 alcohol based. Today we're now using
23 a water based.

24 Q. Okay. And what about a baton?

25 A. Yes, an ASP baton.

1 Q. Okay. And that's the smaller
2 baton that you affix to your belt and
3 it will at the flick of a wrist
4 extend?

5 A. Yes, in theory. But by
6 regulations, we don't have to carry
7 it on our belt anymore. It's allowed
8 to be carried in our bag so it's
9 readily accessible.

10 Q. Okay. When did that change?

11 A. I don't know for sure.

12 Q. Okay. So the current law is
13 you do not need to carry it on your
14 belt ---

15 A. Correct.

16 Q. --- so long as it's in your
17 bag and nearby?

18 A. Current regulation says that.
19 I don't know when it was changed.

20 Q. Okay. And what about the
21 Taser?

22 A. I'm authorized to carry the
23 Taser. I don't remember when we got
24 them. That was after I left the
25 academy.

1 Q. Okay. And what about
2 handcuffs? I'm assuming you had ---

3 A. Yes.

4 Q. --- training with handcuffs?

5 A. Yes.

6 Q. And what did they tell you
7 about handcuffs? Should you handcuff
8 in front? Should you handcuff in
9 back? What situations call for front
10 versus back?

11 A. Regulations state that we're
12 supposed to always handcuff in the
13 back.

14 Q. Okay. Is there any time a
15 situation would call for in the
16 front?

17 A. There again, it's up to ---
18 regulations say one thing, but it is
19 up to the discretion of the trooper
20 that is applying them. I mean, if
21 someone has, you know, bad shoulders
22 or something along those lines, they
23 may be cuffed in the front. But
24 typically when we cuff in the front,
25 we use a waist belt that the

1 handcuffs are slipped through.

2 Q. Okay. Have you ever double-
3 cuffed anybody?

4 A. Yes.

5 Q. Okay. In what circumstances
6 have you double-cuffed someone?

7 A. Typically when their shoulders
8 are --- they may demonstrate are
9 huge, wide, and they can't actually
10 bring their arms back in behind.

11 Q. Okay. Tell me a little bit
12 about your use of force policy, what
13 you know about it. We have not been
14 provided with a copy of it to our
15 knowledge so if you're able to recall
16 what the use of force policy says and
17 if you know the policy number?

18 A. I don't know the exact number
19 but we currently use an array, which
20 is a circle.

21 Q. Okay.

22 A. And the trooper is in the
23 middle.

24 Q. Uh-huh (yes).

25 A. And all our tools that we're

1 provided with from --- let's see,
2 there's our gun, our ASP baton,
3 Taser, pepper spray, physical
4 presence, using words are situated
5 around. And what we're allowed to do
6 is go from --- we're allowed to
7 choose any tool we see as necessary
8 at any time. We don't have to
9 actually run from --- okay, we show
10 up, then we talk to the guy, then we
11 pull out our pepper spray. That
12 didn't work. Pull out our Taser.
13 That didn't work. We're allowed to
14 go to any tool we need as we need.

15 Q. Okay. So what you just said
16 to me, there's no use this next, use
17 this next, use this next?

18 A. Correct.

19 Q. Okay. I just want to talk a
20 little bit more about the Taser. You
21 said it was introduced after your
22 initial basic training?

23 A. Correct.

24 Q. Can you give me an approximate
25 time?

1 A. I don't remember.

2 Q. Okay. What did the training
3 entail?

4 A. I believe it was a one-day
5 class we had to go to. We had to
6 shoot certain amount of cartridges to
7 be certified. They talked about, you
8 know, where to shoot it on a person,
9 when to use it, when not to use it.

10 Q. Can you put a little bit more
11 meat on the bones, when to use it,
12 when not to use it?

13 A. Typically if it's an elderly
14 person or someone in obviously bad
15 health, we shouldn't use it on them.

16 Q. And why is that?

17 A. If they're elderly, we don't
18 want them to fall and hurt
19 themselves.

20 Q. Okay.

21 A. If they obviously have some
22 sort of injury, like they're standing
23 there with a broken arm or a broken
24 leg, you don't want to taser them
25 because when you taser them, if your

1 MD probe load where the probes are
2 actually shot into the individual, it
3 locks up the muscle group and they
4 fall to the ground. Also we were
5 trained that if you're standing on a
6 roof, you don't want to taser
7 somebody, you know. Check out your
8 surroundings, you know, because you
9 don't want them to fall and hit
10 something, that type of stuff.

11 Q. Okay. Any instructions on
12 tasing people who are intoxicated
13 or on drugs?

14 A. Nothing. I mean, that all
15 falls into using your judgment type
16 of stuff.

17 Q. Okay. So there wasn't
18 anything specific that you recall
19 regarding tasing people on drugs or
20 intoxicated?

21 A. No.

22 Q. Okay. What about the
23 psychological and emotional stress of
24 a Taser? Was there any instruction
25 on that?

1 A. Not that I recall.

2 Q. Okay. And what about the
3 model Taser that you carried? Did
4 that ever change? And if so, why?

5 A. I don't believe so, no.

6 Q. Okay. And what about probe
7 versus drive stun? I mean, are you
8 using them in certain situations?

9 OFF RECORD DISCUSSION

10 A. Can you ask your question
11 again, please?

12 BY ATTORNEY CORRADO:

13 Q. Sure. When would you use
14 probe versus drive stun?

15 A. Just to clarify, drive stun is
16 a pain compliance. It's not actually
17 for locking the body up. The Taser,
18 we deploy the probes when there's
19 some sort of threat and you're trying
20 to stop them. The drive stun is if
21 they're not complying, then, you
22 know, like I said, it's pain
23 compliance. You hit them with it.
24 You get them to comply via pain.

25 Q. Okay. And have you ever been

1 involved in an incident where a Taser
2 has caused injury or death?

3 A. Like directly or indirectly
4 or ---?

5 Q. Both.

6 A. Not that I'm aware of.

7 Q. Okay. And where on parts of
8 the body did they say not to tase?
9 You had mentioned earlier that they
10 had instructed you on avoiding
11 certain parts of the body.

12 A. Now, are we talking today's or
13 are we talking then because it's
14 changed?

15 Q. Okay. Could you start with
16 then and then move to today for me,
17 please?

18 A. Okay. The initial training,
19 we were told not to aim for the face
20 area or the groin area.

21 Q. Okay.

22 A. Typically you wanted center
23 mass. And ideally would be a leg to
24 get the maximum coverage.

25 ATTORNEY DONAHOE:

1 Are you talking probe
2 mode?

3 A. Probe mode.

4 ATTORNEY DONAHOE:

5 Yeah.

6 A. In probe mode.

7 BY ATTORNEY CORRADO:

8 Q. Okay.

9 A. Yeah. You want one probe
10 center mass and you'd want one in a
11 leg if possible because that ideally
12 locks up the most amount of muscles
13 to get the person to --- you know,
14 their muscles to stop so they go to
15 the ground.

16 Q. Okay.

17 A. Now, recently, and I'm not
18 sure when this was, this was within
19 the last couple of years after this
20 incident, they changed it where they
21 don't want a center mass anymore.
22 They want it more low, one probe
23 lower, sternum, and the other one in
24 the leg.

25 Q. And what's the reason for the

1 change?

2 A. As it was explained to us,
3 that possibly, possibly could cause
4 heart. I don't know. The department
5 says do it, I do it.

6 Q. Okay. And that was for the
7 probe. Any difference in
8 instructions on drive stun?

9 A. What we were explained drive
10 stun, it's anywhere. I mean,
11 obviously you don't want to get them
12 in the face, anywhere sensitive like
13 that.

14 Q. Okay. So the change has been
15 for both probe and drive?

16 A. No, no. Never for drive stun.
17 It's always been for only the probe
18 mode only.

19 Q. Okay. Okay. Okay. I
20 misunderstood. Thank you. So you
21 said you have not been involved in
22 any other cases where a Taser has
23 caused injury or death. Have you
24 heard of any other cases where a
25 Taser has caused injury or death?

1 A. There was supposedly a case in
2 West Virginia where I believe it was
3 a male individual that was tasered
4 and after he had been sprayed with
5 pepper spray. And the Taser ignited
6 the pepper spray because it was an
7 alcohol based.

8 Q. Okay. As part of your
9 training, did they ask you to
10 volunteer to be tased?

11 A. Yes.

12 Q. Okay. Did everyone have to go
13 through that training?

14 A. The tasing?

15 Q. Yes.

16 A. The tasing was optional.

17 Q. It was optional?

18 A. It was optional.

19 Q. Okay. Did you opt to be
20 tased?

21 A. No.

22 Q. Okay. Has that policy since
23 changed?

24 A. Yes.

25 Q. Okay. And how did that

1 change?

2 A. They don't tase anybody now.

3 Q. And why is that?

4 A. We were told that there is a
5 slight percentage that Taser may
6 cause death.

7 Q. Okay. And when did that
8 change occur, if you know?

9 A. In the past few years. I'm
10 not sure the exact date.

11 Q. Okay.

12 ATTORNEY CORRADO:

13 If we could get a copy
14 of that policy.

15 ATTORNEY DONAHOE:

16 The change?

17 ATTORNEY CORRADO:

18 Yes.

19 ATTORNEY DONAHOE:

20 I've never saw it, but
21 I can do it.

22 ATTORNEY CORRADO:

23 Okay.

24 ATTORNEY DONAHOE:

25 I mean, if they have

1 it, I'll do it.

2 A. Yeah, there's a change.

3 ATTORNEY DONAHOE:

4 It's probably like a
5 circular letter or something,
6 but I don't have it. I'll
7 look for it. I'll ask these
8 guys to get it.

9 ATTORNEY CORRADO:

10 Okay.

11 ATTORNEY DONAHOE:

12 If you could send me an
13 e-mail, I will definitely ---.
14 Then off the record.

15 OFF VIDEO

16 OFF RECORD DISCUSSION

17 ON VIDEO

18 BY ATTORNEY CORRADO:

19 Q. Any instructions regarding
20 taser ing subjects while they are
21 cuffed?

22 A. Try not to.

23 Q. And why is that?

24 A. It's all circumstance
25 depending. I mean, if the person is

1 cuffed and they're running away from
2 you, you know, it's your discretion.
3 I mean, you got to understand, to
4 just throw out this question like
5 this, there's so many circumstances
6 that we run into.

7 Q. Right.

8 A. I mean, yeah, there may be a
9 case where it happens in the probe
10 mode. You know, there's other cases
11 that it wouldn't happen. I mean,
12 it's all depending upon
13 circumstances.

14 Q. But you said try not to. Did
15 somebody tell you to try not to do
16 that? When you say ---?

17 A. They never said --- I mean,
18 it's up to the trooper's discretion
19 and the circumstances you're in at
20 that time.

21 Q. Okay. Did anybody instruct
22 you to try not to?

23 A. No, no one ever said. I mean,
24 common sense would say if someone's
25 laying there on the ground, they're

1 handcuffed, there's no sense in going
2 and tasing them again. You know,
3 in the deploy mode. I mean, that's
4 common sense. But no one
5 specifically said, you know, hey, you
6 know, you don't need to do that.

7 Q. Okay. But as a general rule,
8 that's something you try not to do?

9 A. Me personally, yes.

10 Q. Okay. Have you ever heard of
11 the term positional asphyxia?

12 A. Yes.

13 Q. And how do you understand the
14 term?

15 A. Well, it was explained to us
16 that there was a previous practice of
17 hogtying defendants, which was
18 handcuff behind their back. Their
19 feet were tied together, and the
20 handcuffs were tied.

21 Q. Uh-huh (yes).

22 A. This way, they were laid in
23 the back of the patrol car on their
24 stomachs, and there was a study that
25 said that that caused positional

1 asphyxia where it was hard for them
2 to breathe, which caused the asphyxia
3 and they would die. So we were
4 instructed not to do that, and at all
5 costs, not to --- if you can, keep
6 them off their stomach as much as
7 possible.

8 Q. Okay. And was this part of
9 your basic training or was this
10 something that happened subsequently?

11 A. It's both actually. It was
12 basic training and then also we have
13 mandatory in-service training once a
14 year every year. And that was
15 included in that as well.

16 Q. Okay. And these classes or
17 seminars that you had about
18 positional asphyxia, did you learn
19 that drugs in a person's system can
20 increase the risk of positional
21 asphyxia?

22 A. No.

23 Q. Okay. I think you mentioned
24 this already, but you learned that
25 placing a subject face down can

1 increase the risk of positional
2 asphyxia?

3 A. Yes.

4 Q. Okay. Did you learn that
5 kneeling or placing weight on a
6 subject increases the risk of
7 positional asphyxia?

8 A. Yes.

9 Q. Did you learn that a natural
10 reaction to oxygen deficiency can
11 cause a person to struggle violently?

12 A. No.

13 Q. Did you learn that
14 unresponsiveness of a subject during
15 or after a struggle may indicate
16 cardiopulmonary arrest?

17 A. No.

18 Q. Did you learn as part of your
19 training that the risk of positional
20 asphyxia is increased when the
21 physical restraint includes behind
22 the back handcuffing combined with
23 placing the subject on their stomach?
24 In the stomach and behind the back
25 handcuffing.

1 A. Increases it?

2 Q. Yes, the combination of both.

3 A. Not that it increases it.

4 There's the risk.

5 Q. Okay. Were you trained to
6 recognize breathing difficulties or
7 loss of consciousness?

8 A. Yes.

9 Q. And where did that training
10 come in?

11 A. That was at the academy. We
12 had standardized --- I'm sorry. We
13 had first aid training and first
14 responder.

15 Q. Okay. And I'm assuming that
16 you had subsequent training, I don't
17 want to put words in your mouth,
18 regarding medical training?

19 A. Not medical training, ---

20 Q. Right, right.

21 A. --- I mean, per se. Not like
22 a doctor or anything.

23 Q. Right.

24 A. But we are certified first
25 responders. We also have CPR, AED,

1 and first aid.

2 Q. Okay. And what is the
3 Pennsylvania State Police's policy on
4 providing medical care?

5 A. For what? I mean, ---.

6 Q. For somebody who was in
7 distress. I mean, are you obligated
8 to provide medical care to
9 somebody ---

10 A. Yes.

11 Q. --- in distress?

12 A. Yes.

13 Q. And what is that policy? Does
14 it say anything specific, if you
15 know, other than it says that you
16 should provide medical care to
17 somebody in distress?

18 A. We are to provide care. I
19 mean, we're a first responder. We're
20 to provide care.

21 Q. Okay. And do you know the
22 policy number?

23 A. No.

24 Q. Okay.

25 ATTORNEY CORRADO:

1 If I could get a copy
2 of that?

3 ATTORNEY DONAHOE:

4 Yeah. E-mail me. That
5 would be great.

6 ATTORNEY CORRADO:

7 Okay. All right.

8 BY ATTORNEY CORRADO:

9 Q. Let's turn now to October
10 18th, 2010.

11 A. Okay.

12 Q. Could you tell me a little bit
13 about the start of the shift? Is it
14 11:00 to 7:00?

15 A. It was 11:00 to 7:00 shift. I
16 was working with Trooper Guy
17 Battestilli.

18 Q. Uh-huh (yes).

19 A. He was driving. We were in a
20 marked patrol car in full uniform.

21 Q. Okay. If I could just stop
22 you. I'm sorry. Is this your normal
23 shift?

24 A. My normal shifts are three
25 daylight shifts followed by seven

1 midnight shifts. And then I have
2 four days off. So that is my normal
3 rotation.

4 Q. Okay.

5 A. So this was in my midnight
6 portion of my ten-day stretch.

7 Q. Okay. And you're in uniform?

8 A. Yes.

9 Q. Okay. And tell me what's on
10 your belt.

11 A. On my belt I had my duty
12 pistol, my magazines, my pepper
13 spray, my handcuffs, and my Taser.

14 Q. Okay. Did you have your
15 baton?

16 A. It was in my bag.

17 Q. Okay. And your bag is in the
18 car?

19 A. It was in the backseat.

20 Q. In the backseat, okay. And
21 what about your radio? Do you carry
22 a radio?

23 A. I had to carry a radio in my
24 bag, plus we have a car radio.

25 Q. Okay. Are you issued a cell

1 phone?

2 A. No.

3 Q. Okay. Do you use your
4 personal cell phone on occasion for
5 work?

6 A. Yes.

7 Q. Okay. And do you have your
8 cell phone on you?

9 A. Yes.

10 Q. Okay. Did you do a spark test
11 for the Taser, your Taser, that day?

12 A. Yes.

13 Q. Okay. And that's normal
14 course of business ---

15 A. Yes.

16 Q. --- when you get on duty?

17 A. By regulation every day when
18 you start your shift, you're supposed
19 to do a spark test.

20 Q. Okay. What time does the call
21 come in, if you know?

22 A. I don't know for sure. I
23 mean, I can refer to my report if
24 that's fine.

25 Q. That's okay. I'm going to

1 show you ---.

2 ATTORNEY CORRADO:

3 I'm going to have the
4 court reporter mark this as
5 Johnson Exhibit One.

6 (Johnson Exhibit One
7 marked for
8 identification.)

9 ATTORNEY CORRADO:

10 And, Counselor, I think
11 you've already seen this
12 before.

13 ATTORNEY DONAHOE:

14 Yeah, thanks.

15 BY ATTORNEY CORRADO:

16 Q. Do you know what this document
17 is?

18 A. I do.

19 Q. What is it?

20 A. It's a photocopy of our radio
21 log.

22 Q. Okay. And who maintains that?

23 A. The PCO, which is the
24 communication officer.

25 Q. Okay. And how does that

1 communication officer gather that
2 information?

3 A. Which information are you
4 talking? Do you want me to go
5 through the blocks and I can explain
6 it or ---?

7 Q. Just to move this along, that
8 first number, that CO1-103, that's an
9 incident number?

10 A. Yes, ma'am.

11 Q. Okay. And the MHR stands for?

12 A. That is just a brief --- it's
13 a mental health request, just a brief
14 description of what the incident is.

15 Q. Okay. And do you know what
16 would have been marked out here?

17 A. I don't know what that is. I
18 was wondering that myself, but I
19 don't know what that would be.

20 Q. Okay. It's a code one?

21 A. Yes, ma'am.

22 Q. Okay.

23 A. The initials are the PCO's
24 initials, would be the initial block.

25 Q. All right. And the code one

1 means?

2 A. Code one means that non-
3 emergency. You got an incident and
4 you don't have to respond. I mean,
5 it's not a high speed response. It's
6 just, hey, there's something going
7 on, you need to go there.

8 Q. Okay. And what is the 2322?

9 A. That would be the time it was
10 dispatched.

11 Q. Okay. And the 2337 is?

12 A. The time that we went actually
13 on scene there.

14 Q. So you get to the scene and
15 somebody calls in we've arrived?

16 A. On scene, yes.

17 Q. On scene, okay. What do you
18 know about what's happening at this
19 point?

20 A. What do you mean?

21 Q. What do you know about why
22 you're responding?

23 A. We were told that there was a
24 request for an ambulance, and we were
25 going there. The person was possibly

1 combative, and we were going there to
2 assist EMS.

3 Q. And that's all you knew?

4 A. He had just possibly ingested
5 some pills.

6 Q. Okay.

7 A. And I mean, it was very
8 limited information.

9 Q. Okay. And who tells you that?

10 A. That was given to us through
11 radio, PCO Thomas McGee.

12 Q. Okay. And is that the same
13 person maintaining this log?

14 A. Yes.

15 Q. Okay. And that comes in over
16 the car radio?

17 A. Yes.

18 Q. Okay. All right. So 2337,
19 you arrive?

20 A. Uh-huh (yes).

21 Q. You exit the vehicle, and what
22 happens next?

23 A. Not directly do we exit the
24 vehicle.

25 Q. Okay.

1 A. At 2337 when we pulled into
2 the driveway, we were met there by
3 Timmy Hoofballen, which we later
4 found out was the brother of Troy.

5 Q. Okay. So you're still in the
6 car at this point?

7 A. We're still in the car, yes.

8 Q. Okay.

9 A. Actually, we're in the car at
10 the end of the driveway. We see a
11 male standing there. We weren't even
12 sure we were at the right location.
13 He said yes, we're --- you know,
14 we're the ones that called.

15 Q. Okay. What happens next?

16 A. And I'm in the passenger's
17 seat. Trooper Battestille is
18 driving, and he's talking to Trooper
19 Battestilli and he starts about how
20 he's --- he says he's in the house
21 tearing up the place, you know,
22 screaming and carrying on.

23 Q. Uh-huh (yes). Did he mention
24 anything about what he had taken?

25 A. He said he had taken a box of

1 Mucinex. And at that point, I asked
2 him --- because he was talking to
3 Trooper Battestilli. I'm sitting on
4 the passenger side.

5 Q. Uh-huh (yes).

6 A. And I said, well, what kind of
7 Mucinex is it? I said was it the
8 kind with the pseudoephedrine in it,
9 the kind that you have to get from
10 behind the counter or is it the kind
11 that you can just go and pull off the
12 counter? And he said, well, it was
13 the kind from behind the counter.

14 Q. And why did you want to know
15 that?

16 A. Because pseudoephedrine is
17 what they make methamphetamine out of
18 and it's --- you know, it's a
19 controlled-type substance.

20 Q. Were you concerned about his
21 level of agitation or that he was, in
22 fact, ingesting illegal drugs?

23 A. I wanted to know what he had
24 taken. And there is a difference. I
25 mean, from my lay knowledge at the

1 time, I thought the type that was
2 with the pseudoephedrine would be
3 worse if he had been taking that for
4 himself than the other kind. So
5 that's why I was inquiring.

6 Q. Okay. Did he mention anything
7 else regarding Troy's condition?

8 A. I believe he mentioned that he
9 does this to get high.

10 Q. Uh-huh (yes).

11 A. And he's done this before and
12 at one point he even said something
13 about how a couple weeks ago he had
14 done this and he had gone to the
15 hospital.

16 Q. Okay. Did he mention about
17 any medical conditions Troy had?

18 A. No.

19 Q. Okay. Where is EMS staged, if
20 you know?

21 A. They are staged at --- I can't
22 remember the name of the church. It
23 is a church that is very close
24 proximity. It's probably 100 yards
25 farther south than where we are on

1 the same road.

2 Q. And how did you learn that?

3 A. That's what we were told via
4 radio that they were going to be
5 staging there.

6 Q. Okay. Okay. So Timmy comes
7 to the car. You have a conversation
8 with Timmy. And then what happens
9 next?

10 A. I just had the brief
11 conversation with him.

12 Q. Right.

13 A. There is a female walking up
14 the driveway.

15 Q. Uh-huh (yes).

16 A. Trooper Battestilli asks who
17 is that, and he says, oh, that's
18 Troy's wife. We didn't know any
19 different at the time. She
20 approaches the car. He's out of
21 control. He's screaming and carrying
22 on in the house, he being Troy. He's
23 waking my girls. My girls are up and
24 he won't calm down. You need to
25 hurry up and get in there.

1 Q. Okay. And what happens next?

2 A. They step off to the side. We
3 actually roll the patrol car up. I
4 don't know exactly how far, maybe 50
5 or 60 feet to get closer to the
6 house, exit the patrol car, and
7 follow them into the residence
8 through the back door.

9 Q. Okay. And what do you see?

10 A. We are following Timmy in. He
11 goes into the first room which is the
12 kitchen on the left and says that ---
13 he kind of points around the corner
14 and says, hey, they're around,
15 they're in there, which is the living
16 room. So we take the little
17 entranceway to the end. It's a T.
18 We go to the left and we walk into
19 the living room.

20 Q. And what do you see?

21 A. When we enter the living room,
22 the --- Troy's sitting there on the
23 left end of the couch sitting next to
24 what we later discover was his mother
25 sitting in the middle.

1 Q. Okay. And where is ---
2 Timmy's in the kitchen at this point?

3 A. Yes.

4 Q. Can he see from the kitchen
5 what's happening in the living room?

6 A. Yes.

7 Q. Okay. And where is Ms. Hall?

8 A. I believe she was standing
9 next to Tim.

10 Q. Okay. And is there anything
11 in front of the couch where Troy and
12 his mother are sitting?

13 A. There is a coffee table. You
14 know, a table of some sort there, low
15 table.

16 Q. If you had to estimate, how
17 large would you say the coffee table
18 is?

19 A. Oh, my goodness. Three feet
20 by two feet maybe, three feet by 18
21 inches wide. All I knew was they
22 were both sitting behind it. Maybe
23 four feet.

24 Q. Okay. And what happens next?

25 A. We walked in and Trooper

1 Battestilli is standing on my right
2 and I'm standing on the left. It was
3 his incident. He does the talking.
4 I'm just there.

5 Q. And why is that? Why is it
6 considered his incident?

7 A. There's an understanding that
8 we had that on midnights, since
9 there's two people in one car, we
10 traded what was called majors and
11 minors.

12 Q. Uh-huh (yes).

13 A. And major incidents would be
14 either an incident report or a crash
15 would be considered a major. A minor
16 would be an assignment report, and it
17 could be anything from a C officer or
18 other, assist mental health,
19 anything. And all it is is just
20 based on the reporting.

21 Q. Okay. So I'm sorry. This was
22 considered then a ---

23 A. Minor.

24 Q. --- minor report, and that's
25 why he was assigned to take the lead?

1 A. He was up on this one, yes,
2 ma'am.

3 Q. Okay. All right. So he goes
4 ahead and introduces himself?

5 A. He walks across the room,
6 sticks out his hand and says Trooper
7 Battestilli. And Troy stands up,
8 shakes his hand and then goes and
9 sits back down.

10 Q. Okay. And did you understand
11 that this was a mental health
12 complaint? You knew?

13 A. Not at this point, no. I
14 mean, all we had known at this point,
15 that he was tearing up the place and
16 probably --- and possibly had
17 ingested and overdosed on some sort
18 of medication.

19 Q. Okay. And that would not be a
20 mental health complaint to you or
21 incident to you?

22 A. It depends. I mean, if he was
23 trying to harm himself by
24 intentionally --- he was trying to
25 kill himself, it would be more mental

1 health. If he was doing it just
2 because he took a whole bunch of
3 pills and OD'd, then no, it would be
4 an assist EMS.

5 Q. Okay. Referring back to the
6 mobile unit log, ---

7 A. Uh-huh (yes).

8 Q. --- it is titled by somebody
9 an MHR assist?

10 A. Uh-huh (yes).

11 Q. Is that done at the time or is
12 that done later, to your knowledge?

13 A. I don't know when he did it.

14 Q. Okay. So the call did not
15 come in like that to you?

16 A. No.

17 Q. Okay. I'm sorry. Go ahead.
18 He introduces himself, Trooper
19 Battestilli introduces himself.

20 A. And Trooper Battestilli then
21 steps back towards me. I'm
22 positioned in front of a loveseat,
23 which would be at a 90-degree angle
24 toward where Troy is sitting with my
25 back to the kitchen with the open

1 window, with, I believe, Tim --- is
2 her name, the girlfriend, and Tim are
3 standing like right here on me.

4 Q. Okay.

5 A. And they start --- I'm trying
6 to remember, trying to remember
7 exactly how it was. Troy, at one
8 point, starts talking about how he's
9 the baddest mother fucker around and
10 he can kick anybody's ass.

11 And he, at one point, spins
12 his baseball cap around, stands up,
13 and there's a 20-ounce --- I believe
14 it was an Orange Crush bottle, and it
15 had about yeah much in the bottom.
16 He stands up and he just starts
17 ripping on it like this like he was
18 trying to tear it in half. And his
19 mother says no, no, no, don't do
20 that, you know, that will cause a
21 mess. And Trooper Battestilli says
22 oh, no, don't. Yeah, we don't want a
23 mess. So he sits back down, puts the
24 bottle down. And then he mentions
25 --- he being Troy mentions something

1 about, you know, I found the meaning
2 of life. And Trooper Battestilli
3 said oh, well, enlighten us, what is
4 it? And Timmy starts laughing from
5 the kitchen. And then at that point
6 Troy stands up and he walks around,
7 which would be to his left, around
8 the end of the cocktail table or
9 coffee table, in front of the TV, and
10 he's like I want to go outside.

11 Q. Can I stop you?

12 A. Uh-huh (yes).

13 Q. Sorry. Getting back to the
14 meaning of life, explain in a little
15 bit more detail the conversation
16 between Trooper Battestilli and Troy
17 for me. Does Troy say this in a
18 joking way or is he serious?

19 A. He just says I found the
20 meaning of life, and he sounds
21 serious.

22 Q. Okay. So Troy sounded
23 serious?

24 A. Uh-huh (yes).

25 Q. Does Trooper Battestilli

1 respond to him in a joking way?

2 A. It was please, tell us. You
3 know, he was like if you found the
4 meaning of life, we'd all like to
5 know. You know, it was like, hey,
6 we'd all like to know what the
7 meaning of life is. You know, he
8 wasn't necessarily joking. It was
9 just if you're so enlightened, please
10 let us all know.

11 Q. Did he snicker or laugh when
12 he said that?

13 A. No.

14 Q. Okay. And you said Timmy
15 laughed?

16 A. Yes.

17 Q. Okay. And then what happens
18 next? You said he comes around to
19 the left of the coffee table?

20 A. He gets up and comes around
21 the left end and he approaches
22 Trooper Battestilli, puts his arm out
23 like this and says hey, I want to
24 talk --- let's go outside. And puts
25 his arm on what would be Trooper

1 Battestilli's right arm, and then he
2 puts his right arm on my left arm
3 because we're standing looking at
4 each other.

5 Q. Uh-huh (yes).

6 A. And like he's trying to crowd
7 us to get us to go outside, and grabs
8 our arm to kind of, you know, do a
9 little of these to get us to go
10 outside. And at that point, Trooper
11 Battestilli said no, no, no, we don't
12 need to go outside. We can stay in
13 here and talk.

14 Q. And if you know, why did
15 Trooper Battestilli not want to go
16 outside and talk?

17 A. I have no idea other --- I
18 mean, my thoughts are there's no
19 reason to go outside and talk. I
20 mean, we're in here. Everything's
21 fine. Everything's relatively ---
22 it's calm. You know, there's no
23 sense even going outside.

24 Q. When he touches you, was it a
25 violent touch?

1 A. No.

2 Q. Okay.

3 A. Well, hang on. Could you
4 define what you say by violent?

5 Q. Did you interpret it as
6 violent?

7 A. He put his hand on me like he
8 was trying to get us to go out the
9 door.

10 Q. Okay. And Trooper Battestilli
11 said no, we don't need to ---

12 A. Right.

13 Q. --- go outside? Then what
14 happens?

15 A. At that point, I pivot back.
16 Trooper Battestilli pivots back, so
17 we're looking at each other. And
18 Troy then turns and stares at me.
19 And my back is up against the
20 loveseat, which is up against the
21 wall. I had nowhere to go, and he's
22 staring at me. And I can see it was
23 like slow motion. All of a sudden
24 you could see his shoulder dipping
25 and his right arm was coming around

1 and here it comes. Comes up like
2 this. And if he's throwing a punch,
3 I throw up my left arm and block it.

4 Q. How long did the eye contact
5 last?

6 A. Ten seconds maybe.

7 Q. And who broke the eye contact?

8 A. He did when he coiled down.
9 He kind of pulled his head this way
10 and as he was coming up.

11 Q. Did you say anything during
12 those ten seconds to him?

13 A. No.

14 Q. Did Trooper Battestilli say
15 anything during those ten seconds to
16 him?

17 A. No.

18 Q. Okay. So you block it with
19 your left arm, you said?

20 A. Left arm, right in this ---
21 probably this location here.

22 Q. Okay. And then what happens?

23 A. As he throws the punch and I
24 go to block his weight's coming
25 forward on me, so if I may

1 demonstrate. As his arm comes past,
2 I take this arm and roll it around
3 like this in an effort to grab the
4 arm. And he's pushing me down. I
5 pull the arm in up under my armpit
6 like this so his arm is shooting
7 straight under my armpit this way.
8 And this is all happening as I'm
9 falling backwards with him on top of
10 me. I take this arm, grab this arm
11 around and, for lack of a better
12 term, it's almost like he's doing a
13 Superman like this with his arms
14 underneath my armpit. And at this
15 point, I'm in fear that he's trying
16 to grab one of my devices on my belt.
17 I have no idea. I mean, the guy just
18 threw a punch at me. I don't know if
19 he's going for my Taser. Is he going
20 for anything? So I grab and hold on.
21 But as we're going back and I'm
22 holding on, he falls on top of me.
23 My head goes up. I fall into the
24 loveseat. My head hits the upper
25 portion, upper back portion into the

1 wall like this, and he's laying fully
2 on top of me pushing his weight down
3 on top of me.

4 Q. Does your head hit the top of
5 the loveseat or the wall or the bar
6 behind you?

7 A. It does not hit the bar. I
8 think it was the intersection of
9 where the loveseat and the wall is
10 because there was like --- I don't
11 know. I was back ever so ---. I
12 don't know if it was hard on the top.
13 My head hit something hard and it was
14 right at the intersection of where
15 the loveseat touches the wall.

16 Q. And it was the back of your
17 head that hit?

18 A. It was right at the back of my
19 head here.

20 Q. The lower?

21 A. The lower, like right in
22 through here.

23 Q. Okay. And where are the tools
24 on your belt? Is your gun on your
25 right side?

1 A. My gun is on this side. My
2 magazines are here.

3 Q. If you wouldn't mind not
4 saying this side. Tell me left or
5 right.

6 A. I'm sorry.

7 ATTORNEY DONAHOE:

8 Yeah, just use the
9 right.

10 A. Okay. Gun is on right side.
11 Magazines are front right side which
12 would be between my belt buckle and
13 my firearm. On the other side I had
14 my Taser, which would be on the left
15 side front.

16 BY ATTORNEY CORRADO:

17 Q. Uh-huh (yes).

18 A. And then I believe at that
19 time I had pepper spray would be
20 behind it, and then my cuffs were
21 behind it. Then I had a flashlight
22 loop in the back.

23 Q. Okay.

24 A. The Taser opens. It's a
25 cross-draw Taser, so it opens to the

1 front.

2 Q. Uh-huh (yes).

3 A. So with him coming on top of
4 me, it's obvious you would pull
5 straight out rather than pull to the
6 back, if that makes sense.

7 Q. Does your pistol have a
8 holster with a snap?

9 A. Let me think here because,
10 like I said, we had switched weapons
11 and we have switched holsters. What
12 did the old ones have? The old
13 holster had a --- it was a double
14 retention system. It had a snap that
15 went along the outside and around the
16 front, but also had an internal
17 device in it so if it came unsnapped,
18 you just couldn't pull it straight up
19 and out.

20 Q. And that was the one you were
21 wearing ---?

22 A. That was the one I was wearing
23 then, yes.

24 Q. Okay. And I'm assuming you're
25 right-handed?

1 A. Yes.

2 Q. Okay. And you said your Taser
3 is on your ---

4 A. Left side.

5 Q. --- left side?

6 A. Yes, correct.

7 Q. And that's at a front cross
8 --- how did you describe that for me
9 earlier?

10 A. It's a cross-draw.

11 Q. Right, right.

12 A. It's to use your strong hand
13 to pull it. There is a button that
14 you activate. You're supposed to
15 activate with your index finger. You
16 lay your finger on it. You push it,
17 and it just pulls straight out.

18 Q. Okay. And what type of
19 firearm were you carrying at the
20 time?

21 A. It would have been a Glock. I
22 can't remember the nomenclature. I
23 believe it was a model 37, which is a
24 45 GAP.

25 Q. There's no safety on a Glock.

1 Was there a safety feature on your
2 Glock?

3 A. Glock's have --- it's all
4 internal. There's no actual latch on
5 it for a safety.

6 Q. Okay. So there was no
7 traditional safety feature on your
8 Glock?

9 A. There is what they call ---.

10 Q. No latch?

11 A. No latch. They do call the
12 trigger a safety, which has a little,
13 like a horseshoe piece on it that if
14 you --- that you have to push that in
15 to make it fire.

16 Q. Okay.

17 A. I don't know. I'm sorry. You
18 have to see how a Glock is to
19 understand where there's a ---. In
20 the trigger, there's a horseshoe that
21 sticks up this way, but it has to be
22 depressed before the trigger will
23 actually fire.

24 Q. Okay. So he's got his arms
25 straight out like Superman and

1 they're under your armpits?

2 A. Yes, ma'am.

3 Q. And you've now gone backwards
4 onto the couch?

5 A. Yes.

6 Q. What happens next?

7 A. Well, I'm laying there. I
8 can't see what's going on because his
9 chest is up over my face. He's up
10 over me like this, and I hear a Taser
11 being deployed.

12 Q. Where are your feet at this
13 time?

14 A. They're on the floor.

15 Q. And where are Troy's feet, if
16 you know?

17 A. I don't know.

18 Q. Okay. You heard a Taser being
19 deployed?

20 A. I heard a Taser being
21 deployed. I felt Troy's body tighten
22 up which I was told that was the
23 effect of the Taser being deployed.
24 It was deployed in probe mode because
25 I heard the actual --- you actually

1 can hear the difference between a
2 drive stun and the deploy mode. I
3 heard it deploy. I felt his body
4 tighten up and I put my hands up and
5 I pushed myself out to my right side,
6 which would be his left side.

7 Q. Okay. Did you seek medical
8 treatment for your head?

9 A. No.

10 Q. Did you see Troy hit his head?

11 A. No.

12 Q. Did you hear Troy's head hit?

13 A. No.

14 Q. Okay. So now you've pushed
15 him. And what happens next?

16 A. I didn't ---.

17 Q. Well, you moved him ---?

18 A. I didn't move him. I just
19 slid out from underneath him.

20 Q. Okay. And then what happens
21 next?

22 A. I take my left foot. It goes
23 on the ground. My right foot is on
24 the knee. Trooper Battestilli's
25 like, hey, cuff him up. I grab what

1 would be his left arm. I pull my
2 handcuffs out, cuff his left arm.
3 Had a little bit of trouble getting
4 his right arm because his right arm
5 is, if I may, it's out like this.
6 Pulled his right arm back and then I
7 get it secure.

8 Q. Are you putting any of your
9 body on him during the cuffing
10 process?

11 A. No.

12 Q. Does Trooper Battestilli have
13 any of his body on Troy during this
14 cuffing process?

15 A. He's behind him. I don't know
16 if any of his weight was on him or
17 not.

18 Q. Are the probes still in the
19 back?

20 A. Yes.

21 Q. Okay. And what happens next?

22 A. Once his handcuffs were
23 secured, I pulled the probes out of
24 his back, out of Troy's back. I
25 believe I put them on the counter

1 which would have been like right in
2 front of us. Trooper Battestilli
3 popped the cartridge off the Taser.
4 I secured that in my left coat
5 pocket.

6 Q. Okay. And then what happens
7 next?

8 A. And then Troy starts bucking
9 around, kicking, starts flailing
10 around on the couch. And what I do
11 at that point is I take my left knee
12 off the couch, have both feet on the
13 ground, and I put my shoulder on his
14 back to try and keep him from kicking
15 around and put my shoulder like this,
16 wrap his shoulder, and I'm holding
17 him like this to keep him from
18 flailing around.

19 Q. When you say flailing, what do
20 you mean? Is this his upper body?

21 A. His upper body's moving. He's
22 kicking with his feet.

23 Q. And he's facedown on the
24 couch?

25 A. Yes.

1 Q. So his feet are kicking
2 forward?

3 A. They're kicking out behind,
4 like a --- almost like a donkey kick,
5 if that clarifies it, how they kick
6 out behind.

7 Q. Did he kick anyone prior to
8 you restraining him?

9 A. No.

10 Q. Okay. So tell me again if you
11 would what position you had him on
12 the couch after he started flailing?

13 A. My right shoulder was on his
14 upper back. This arm was holding his
15 --- which would be his right
16 shoulder, and I was holding him in
17 position like this.

18 Q. Okay. And where are your
19 knees at this point?

20 A. My feet were on the ground,
21 and I believe my knees were on either
22 the sofa or the ground. I didn't
23 have --- the loveseat, I'm sorry,
24 because the loveseat's low and I was
25 down like this.

1 Q. Okay. And so your knees are
2 not on him?

3 A. No.

4 Q. And where is Trooper
5 Battestilli at this time?

6 A. He's behind me back here, at
7 the feet, the lower end.

8 Q. Okay. And what is he doing,
9 if you know?

10 A. I hear what sounds like a
11 drive stun. I'm more concentrated
12 with the upper part, the upper
13 portion, keeping control of him
14 there. What he's actually doing, I
15 don't see him do anything. I mean,
16 I'm not focusing on him. I'm
17 focusing on Troy.

18 Q. Okay. Does he tell you that
19 he's going to drive stun?

20 A. No.

21 Q. Okay. What is Troy saying at
22 this time?

23 A. He doesn't say anything.

24 Q. Okay. And where is his face
25 at this time?

1 A. It's on the loveseat.

2 Q. Okay. So you hear the drive
3 stun?

4 A. Uh-huh (yes).

5 Q. And then what happens?

6 A. I believe Troy lets out a ---
7 like a little scream or something
8 like that. He continues to kick.
9 And then he calms down for a few
10 seconds and Trooper Battestilli's
11 like I'm going to go get my shackles
12 out of the car.

13 Q. So you only hear or have
14 knowledge of only one drive stun?

15 A. The drive stun, yeah. I mean,
16 the individual, I can't count how
17 many he does. I don't know how many
18 he actually does.

19 Q. Well, what does it sound like?

20 A. It's a clacking noise.

21 Q. Okay. Does it make a clack
22 per ---?

23 A. No, what it does is when you
24 activate the Taser, there's an
25 electric current that goes ---

1 there's two probes that stick out and
2 there's an electric current that goes
3 between the two and it's just like
4 clack, clack, clack, clack, clack,
5 clack, clack, clack, clack, clack,
6 clack. It's a continuous. As long
7 as it's --- as long as you have the
8 trigger pulled, it's a continuous
9 noise of the electricity clacking.

10 Q. Okay. So that drive stun you
11 hear, how long is that clack, if you
12 can estimate?

13 A. I don't know.

14 Q. Okay. And you only hear one
15 before Trooper Battestilli says I'm
16 going to get my shackles?

17 A. What do you mean? One clack?

18 Q. Yes. Only one continuous
19 clack?

20 A. It's hard to remember, I mean,
21 if it was one continuous or if there
22 were several short bursts. I don't
23 know.

24 Q. Okay. Is there any discussion
25 regarding the location of Troy's

1 clothes or pulling up his shirt or
2 trying to get an accurate spot in
3 order to accurately drive stun him?

4 A. There was no discussion
5 between --- you mean between me and
6 Trooper Battestilli?

7 Q. Yes.

8 A. No, we never had a discussion.

9 Q. Okay. So to your knowledge,
10 if I can recap, you hear the drive
11 stun deployed, but you don't know how
12 many drive stuns are administered?

13 A. No, no.

14 Q. Okay. What you hear next
15 though is Trooper Battestilli saying
16 I'm going to get my shackles?

17 A. Right.

18 Q. Okay. And is Troy compliant
19 at this point?

20 A. Yes.

21 Q. Okay.

22 A. And at that point he says I'm
23 going to get my shackles and that was
24 to restrain his feet.

25 Q. Uh-huh (yes).

1 A. Trooper Battestilli asks Timmy
2 if he would come down and help hold
3 his feet while he goes out to the car
4 to get the shackles, and Timmy comes
5 around and grabs ahold of him in some
6 fashion.

7 Q. And are you maintaining the
8 same position you had earlier?

9 A. I'm still holding the same
10 position, yes.

11 Q. Okay. So you don't have any
12 --- you don't have your knees on him?
13 You have your upper body on his upper
14 body?

15 A. Yes.

16 Q. Okay. And from what part of
17 his body to what part of his body do
18 you think your weight is being
19 applied to? For example, is it the
20 waist to the neck? Is it from his
21 lower buttocks to his neck?

22 A. Probably from about here. I
23 mean, I laid my arm across him like
24 this so he wouldn't be not a big
25 path, you know, from wherever, maybe

1 here up across my shoulder in this
2 fashion so it's almost like a
3 triangle.

4 Q. Only because here the court
5 reporter won't be accurate when we
6 look back at the record, would you
7 say here is mid-back?

8 A. It's easier to show than it is
9 to describe. I mean, it would start
10 maybe mid-back to top of --- to the
11 top of his shoulder area and a
12 diagonal from mid-back ---. It would
13 be mid-back left side to top of
14 shoulder right side.

15 Q. Okay.

16 A. And then draw like a triangle
17 across to the right shoulder --- to
18 the left shoulder. So if you could
19 draw a triangle in that area.

20 Q. Okay. So Timmy is now holding
21 his feet?

22 A. Uh-huh (yes).

23 Q. And how long does it take
24 Trooper Battestilli to return with
25 the shackles?

1 A. I don't know. It seemed like
2 an eternity.

3 Q. Okay.

4 A. I mean, seriously. I mean, I
5 don't know if it's off the record.
6 It seemed like an eternity. I could
7 literally hear his footsteps in the
8 gravel as he was running to the
9 patrol car and on the way back. I
10 couldn't give you an actual time
11 though.

12 Q. Were you having difficulty
13 still maintaining Troy in a
14 compliant ---?

15 A. No, he was fine at the point.
16 The situation is I'm a trooper here
17 by myself with someone who has been
18 combative. So if Trooper
19 Battestilli's out of the house, I'm
20 here with him by myself.

21 Q. Okay. Does your pressure go
22 any --- above the shoulders at any
23 point? Are you near his neck?

24 A. No.

25 Q. Okay. So he returns. And

1 then what happens?

2 A. Timmy gets up and we move him
3 onto the floor on his stomach. And
4 there was some --- Troy becomes
5 agitated a little bit again, starts
6 kicking and flailing again. He's on
7 his stomach on the floor. Trooper
8 Battestilli applies the shackles.
9 And then we roll him onto his back.

10 Q. Okay. Now, and what was the
11 purpose of placing him on his stomach
12 originally and then turning him over
13 onto his back?

14 A. Well, originally he was on his
15 stomach --- to bring him on his
16 stomach. On his stomach he's easier
17 for shackles because if he's on his
18 stomach while the handcuffs and/or
19 shackles are being applied, he can't
20 see what we're doing.

21 Q. Uh-huh (yes).

22 A. And that was one of the
23 techniques. We don't want the person
24 who's being cuffed to know what we're
25 doing because if they have any

1 intentions of kicking at us, they can
2 see us. So if they're facedown, then
3 it's easier to apply the shackles.
4 And then once the shackles are
5 applied, we flipped him on his back
6 for positional asphyxia, just lay him
7 out.

8 Q. And what is ---?

9 ATTORNEY DONAHOE:

10 You mean to
11 prevent ---?

12 A. Prevent, prevent positional
13 asphyxia, yes. I'm sorry.

14 ATTORNEY DONAHOE:

15 I just wanted to make
16 sure.

17 BY ATTORNEY CORRADO:

18 Q. And then what happens next?

19 A. At that point he's laying
20 there. And I'm in a squatted
21 position. My feet on the ground and
22 I call it like a catcher's, baseball
23 catcher's position where my knees are
24 touching him. I have one knee, it
25 would be my left knee, is touching

1 his upper right shoulder. My right
2 knee would be touching the waist
3 area, if I may, which would be the
4 joint, right around the hip area.
5 And I'm in this position. Just have
6 my legs just touching him in that
7 position because if he tries to get
8 up, I could apply pressure to hold
9 him down if need be, but we are
10 required to maintain contact with
11 anyone that is a prisoner at this
12 point, and he was a prisoner because
13 he had committed the aggravated
14 assault.

15 Q. What is his condition at this
16 time? Is he conscious?

17 A. He is conscious, but he's just
18 --- he's laying there. Eyes are
19 open.

20 Q. Eyes are open. Is he talking?

21 A. No.

22 Q. Has his color changed?

23 A. No.

24 Q. This is a department
25 requirement that you must maintain

1 contact with a prisoner?

2 A. Yes.

3 ATTORNEY CORRADO:

4 And if I could get a
5 copy of that policy too?

6 ATTORNEY DONAHOE:

7 Uh-huh (yes).

8 BY ATTORNEY CORRADO:

9 Q. Because he is shackled at this
10 point and he's handcuffed behind his
11 back?

12 A. Yes, ma'am.

13 Q. He would not have been able to
14 stand up?

15 A. I can't answer that. And the
16 reason I say that, because I have
17 seen people that are shackled and
18 handcuffed --- we actually had an
19 incident in Punxsy where a guy was
20 that way and he hopped straight to
21 his feet and started hobbling away.

22 Q. All right. So your left knee
23 is on your --- your left knee is on
24 his left shoulder?

25 A. Right shoulder.

1 Q. Right shoulder.

2 A. Uh-huh (yes).

3 Q. And you said your right knee
4 is now on his hip bone?

5 A. Waist, hip bone. Yes, right
6 at the junction where his hip would
7 be.

8 Q. Okay.

9 A. Sort of at the crease there.

10 Q. Are the heels of your feet up?

11 A. Yes.

12 Q. Okay. And where are your
13 hands at this point?

14 A. They're sitting just like
15 this. I actually had my elbows
16 resting. I'm sitting like a
17 catcher's position. My elbows are on
18 my thighs.

19 Q. Okay.

20 A. Right elbow, right thigh.
21 Left elbow, left thigh.

22 Q. And your hands are on your
23 thighs as well?

24 A. No, they're hanging out over,
25 you know, kind of like this.

1 Q. Are they on Troy at all?

2 A. No.

3 Q. And where are the family
4 members at this point?

5 A. I don't know where the mom's
6 at. And I don't know where Kim's at.
7 Best I recall, I believe Tim is
8 standing, which would be behind me to
9 the right.

10 Q. And is anyone talking at this
11 point? Talking to you?

12 A. Anybody being who?

13 Q. Any of the family members?

14 A. No.

15 Q. Nobody engages in a discussion
16 with you or Trooper Battestilli?

17 A. While this is going on,
18 Trooper Battestilli actually leaves
19 the residence to call to have --- I'm
20 not sure who he calls, whether he
21 calls our station or if he calls 911
22 directly, but he calls to have EMS
23 come because we feel it's safe enough
24 for them to come to the scene at this
25 point.

1 Q. Did you and he have a
2 conversation about that? Did he say
3 to you I'm going to leave at this
4 time?

5 A. I think he said I'm going out
6 to call to have the EMS come up.

7 Q. Did Troy show any signs of
8 distress at this point?

9 A. No.

10 Q. What is the purpose of going
11 outside to make the call? Why can't
12 the call be made right at the scene?

13 A. It technically was the scene.
14 I mean, when we call the station, we
15 typically go outside.

16 Q. And what did he use to make
17 the call?

18 A. I believe it was his personal
19 cell phone.

20 Q. And why not a radio?

21 A. Radios were in the car.

22 Q. Okay. How long is he ---?

23 A. May I interject?

24 Q. Yes.

25 A. On the radio, at the time we

1 had gotten our new 800 radio system,
2 and it's not always dependable. So
3 we were in the habit of not even
4 carrying them with us because there
5 was no guarantee it was going to even
6 work.

7 Q. Okay. So the 800 system that
8 you had at the time was unreliable?

9 A. Still have.

10 Q. Still have is unreliable. And
11 the cell phone ensures that you'll
12 get through?

13 A. Yes.

14 Q. Okay. Do you hear him make
15 the call?

16 A. No.

17 Q. How long is he gone?

18 A. I don't know. Several
19 seconds. I don't know the exact
20 time.

21 Q. Does anything happen while
22 he's gone?

23 A. No.

24 Q. Troy's condition does not
25 change?

1 A. Does not change.

2 Q. Trooper Battestilli comes back
3 into the home. What happens?

4 A. He's standing behind me on my
5 left, and I'm still in the same
6 position watching Troy. And I'm
7 watching his face. And all of a
8 sudden I see his eyes roll back in
9 his head. I reach down at that point
10 with my left hand and I feel for a
11 pulse, which would be on the left
12 side of his neck, and I felt a pulse.
13 I could see his chest rising up and
14 down so he was still breathing. So
15 he had a pulse and was breathing. We
16 then moved Troy into what was called
17 the recovery position, which would
18 have been we rolled him on his right
19 side.

20 Q. Did any family member indicate
21 to you that Troy was not breathing?

22 A. No.

23 Q. Okay. After he's moved into
24 the recovery position, what happens
25 next?

1 A. At that point, because his
2 eyes rolled back in his head, I
3 thought there could be some sort of
4 --- you know, more of a medical
5 emergency. Then I personally walked
6 outside to see where EMS was. And as
7 I'm walking out the back porch into
8 the driveway, EMS is already out of
9 their vehicle and walking towards the
10 back porch. I tell them they need to
11 expedite to the house.

12 Q. So you did not even complete
13 the call to the state police to
14 expedite, or you did?

15 A. I never called at all.

16 Q. You never called at all?

17 A. I never called at all. As I'm
18 walking out to see where EMS was,
19 because they were staged in very
20 close proximity and they should only
21 take a minute or two to get there, I
22 just walked out to see where they
23 were at, and they were already there
24 getting out of their vehicles.

25 Q. Do you know if Trooper

1 Battestille made a telephone call?

2 A. I don't know.

3 Q. Okay. Before you exited the
4 home, did you take Troy's pulse
5 again?

6 A. No.

7 Q. Did Trooper Battestille take
8 his pulse again?

9 A. I don't know.

10 Q. Were his cuffs moved at any
11 time prior to EMS arriving?

12 A. No.

13 Q. What did you tell the EMS
14 personnel upon their arrival?

15 A. I believe I said that he
16 appears to be in trouble. I said to
17 hurry up and get in the house.

18 Q. Was there any mention of him
19 being tased?

20 A. I did not specifically say it,
21 no.

22 Q. Okay. Who were the first
23 responders on the scene? I
24 understand there's a fire department
25 response and then a paramedic

1 response? And correct me if I'm
2 wrong.

3 A. I believe it was the Big Run
4 Fire Department QRS was there. And
5 it was an EMS unit, but I don't --- I
6 don't know.

7 Q. Do they go into the home first
8 or do you go back in and they follow
9 you?

10 A. I go in with them. I don't
11 know specifically if it was EMS, me,
12 EMS or I was first, they were second.
13 I'm not sure exactly the order, but I
14 go in with them to show them where it
15 was at.

16 Q. And what happens next?

17 A. We go in and he is on his
18 side. Troy is on his side still
19 cuffed. I asked if they wanted me to
20 move the handcuffs to the front.
21 They said yes. So at that point, I
22 uncuffed him from the back and moved
23 the handcuffs to the front.

24 Q. So they did not ask you to do
25 that?

1 A. I asked them if they wanted me
2 to do that, and they wanted me to
3 adjust the handcuffs.

4 Q. And what was Troy's condition
5 at this time?

6 A. I don't know.

7 Q. Was he blue?

8 A. No. Not that I'm aware of.
9 Other than I handcuffed him --- and
10 after I handcuffed, I got up and
11 walked out.

12 Q. Was he conscious?

13 A. I don't know.

14 Q. Did he appear conscious to
15 you?

16 A. I was adjusting the cuffs and
17 I wasn't looking directly at his
18 face.

19 Q. Were any of the family members
20 saying anything at this time?

21 A. Not that I can recall.

22 Q. Did Trooper Battestilli say
23 anything to you at this time?

24 A. No.

25 Q. Were there any other

1 conversations with Trooper
2 Battestilli about Troy's condition,
3 about whether he was breathing, about
4 the pulse?

5 A. Between me and him?

6 Q. Yes.

7 A. No.

8 Q. What about any of the family
9 members?

10 A. No, not with me.

11 Q. Okay. How long of a time
12 period do you think it was before the
13 shackles go on and EMS arrives?

14 A. A couple minutes. I don't
15 know exactly. I don't know. There's
16 probably a log as to when they went
17 on scene there, but I don't know the
18 exact time. It wasn't an extended
19 period. Wouldn't have been more than
20 a couple minutes.

21 Q. Did Troy do anything when you
22 uncuffed him and put his cuffs in the
23 front?

24 A. No.

25 Q. Were his hands limp and

1 unresponsive?

2 A. They were no different than
3 anybody else that I've adjusted the
4 handcuffs on. He complied by moving
5 them to the front.

6 Q. Did you ask him to move them
7 to the front or did you move them to
8 the front for him?

9 A. Well, what we did is he was on
10 his side. We uncuffed. We rolled
11 him onto his back. Hands were off to
12 the side and I just hooked them onto
13 the front.

14 Q. And you weren't able to tell
15 whether he was conscious or not at
16 that point?

17 A. I didn't pay any attention to
18 whether he was or not.

19 Q. What was the response of the
20 EMS? What did they say about his
21 condition when they arrived, if
22 anything?

23 A. I was not there for that.
24 After I uncuffed, I walked back
25 outside.

1 Q. And where was Trooper
2 Battestilli?

3 A. He was still inside. I'm
4 sorry. He was still inside.

5 Q. Okay. And how long was it
6 until EMS came out?

7 A. I don't know.

8 Q. Did you follow them to the
9 emergency room?

10 A. Eventually we did. While they
11 were inside, I went and had contacted
12 station to talk to --- get PCO McGee
13 to call our shift supervisor, which
14 happened to have been Sergeant
15 Metzger. And I was talking to him on
16 the phone saying, hey, look, I was
17 assaulted and, you know, EMS is here
18 with the person. We need to have a
19 crime person come out. So I was
20 engaged in that conversation. I
21 don't know what else was going on.
22 EMS left and Trooper Battestilli and
23 I were still sitting there.
24 Everybody had gone from the house,
25 and we were waiting to find out where

1 they wanted us to go, if they wanted
2 us to stay on scene, if they wanted
3 to follow up to the hospital.

4 Q. So you made the call about the
5 assault. Any mention of the fact
6 that Troy was in major, ---

7 A. Yes, yes.

8 Q. --- serious distress?

9 A. Yes, yes.

10 Q. Okay. And what was said
11 during that conversation?

12 A. I told Sergeant Metzger, I
13 said, look, we were at this
14 residence. It was just a brief
15 synopsis of what happened. He
16 assaulted me and he's in some sort of
17 distress. He's having labored
18 breathing. Unsure what his condition
19 is at this time, but we need to have
20 a crime person come out to
21 investigate.

22 Q. And tell me about some of the
23 conversations you had that day with
24 Trooper Battestilli about what had
25 happened. Did he tell you anything

1 more about Troy's condition when you
2 had left the residence?

3 A. He had mentioned that ---.
4 Later he had mentioned to me that he
5 was --- he had talked to the mother
6 and that they had some sort of
7 discussion about how when he takes
8 all these Mucinex pills he gets
9 really labored breathing, but that
10 was something that was common with
11 him.

12 Q. So that conversation did not
13 happen while you were present?

14 A. No.

15 Q. And you believe that
16 conversation happened when you
17 stepped outside to call EMS or ---?

18 A. That would have been the only
19 other time it could have happened.

20 Q. Okay. Let's get back to when
21 Troy's on the back shackled and
22 handcuffed. He's got his hands
23 behind his back?

24 A. Uh-huh (yes).

25 Q. You've got two knees on him.

1 I mean, department regulations don't
2 focus on the type of --- they want
3 you to hold the prisoner but there's
4 no guidelines as to what type of
5 hold, is there? One knee to --- have
6 knees on him, you don't need to. You
7 could be simply holding his arm?

8 A. Well, it's up to --- it's up
9 to the trooper's discretion. I mean,
10 at this point I've had an individual
11 that threw a punch at me and has been
12 combative the whole time. So I'm not
13 going to just sit there with, you
14 know, two fingers on him and say, you
15 know, okay, you know, you're going to
16 have more in contact just in case
17 because the potential was there that
18 he was high, then low, then high,
19 then low that he's going to go on a
20 high again, that he's going to jump
21 up and try to start flailing again.
22 So I had to be prepared that if this
23 was the case, you know, I had to
24 protect myself and protect him.

25 Q. Okay. So did you wind up

1 going to the emergency room?

2 A. Yes.

3 Q. And what happened there?

4 A. We went to the ER and stood
5 by. Sergeant Metzger arrived and
6 told us just to wait. I'm not sure
7 who called the officer of the day,
8 but he was notified, which was
9 Captain Scott Neil. He showed up.
10 And he authorized ---. In my
11 presence, he made a call. I don't
12 know who he called, but he instructed
13 our crime corporal, which was
14 Corporal Chuck Dominick, to be called
15 out to do the investigation for the
16 aggravated assault. And I believe he
17 called another regular crime trooper,
18 but I'm not sure who it was.

19 Q. Okay. What was the results of
20 the internal investigation that was
21 conducted here?

22 A. I was cleared.

23 Q. Okay. And what was the
24 results of the aggravated assault
25 case? What happens to a case like

1 this where somebody dies?

2 A. I believe it was exceptionally
3 cleared. I mean, I can refer to the
4 report but I believe it was
5 exceptionally cleared due to the
6 death of the actor.

7 Q. Okay. Just getting back a
8 little bit on this mental health, so
9 you didn't realize that this was a
10 mental health call until after the
11 fact? You had mentioned earlier that
12 you didn't understand that this was a
13 mental health call.

14 A. No. What we were given was an
15 individual had ingested a lot of some
16 sort of drug and possibly had
17 overdosed and we were there initially
18 to assist EMS.

19 Q. Okay. And what are you
20 trained to do in situations like
21 this? I mean, are you trying to ---
22 are you trained to calm the person
23 down? What are you trained to do?
24 Your goal is to get this person into
25 the ambulance?

1 A. Our goal is to get them to
2 help however we can. Either talk
3 them into the ambulance, have a
4 family member drive them to the
5 hospital. We've used all different
6 types of, you know, techniques.
7 Sometimes we have to take them, you
8 know. They physically just flat out
9 don't want to go. We've had to take
10 people before. So our goal is to ---
11 if it is a ---. We want to have the
12 least amount of impact and to get
13 them to go just as calmly and quietly
14 as possible.

15 Q. Did Trooper Battestilli ask
16 any family member at any time to take
17 over or take him to the hospital?

18 A. I don't recall, no.

19 Q. Okay. Do you also have a
20 military background?

21 A. Yes.

22 Q. Can you tell me about that?

23 A. Four years in the Marine
24 Corps.

25 Q. Okay. And did you receive any

1 sort of medical training during that
2 time as well?

3 A. Just your standard combat
4 training.

5 Q. Okay. And I'm assuming during
6 both your trooper and your military
7 background, you've had training in
8 defensive tactics?

9 A. Yes.

10 Q. Okay. Did you use any of
11 those defensive tactics that day on
12 Mr. Hoof tallen?

13 A. Like that I was trained?

14 Q. Yes.

15 A. I blocked his punch, and then
16 I tried to restrict his movement by
17 grabbing his arms.

18 Q. Okay.

19 ATTORNEY CORRADO:

20 Can we just take a
21 quick break and see if we have
22 any further questions?

23 ATTORNEY DONAHOE:

24 Sure.

25 OFF VIDEO

1 SHORT BREAK TAKEN
2 ON VIDEO

3 VIDEOGRAPHER:

4 This deposition has
5 resumed.

6 ATTORNEY CORRADO:

7 Trooper Johnson, we
8 don't have any further
9 questions for you at this
10 time. Thank you.

11 A. You're welcome.

12 ATTORNEY DONAHOE:

13 We don't have any
14 further questions and we'll
15 read the transcript. I'll
16 explain that to Trooper
17 Johnson.

18 * * * * *

19 DEPOSITION CONCLUDED AT 2:49 P.M.

20 * * * * *

21
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25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CLEARFIELD)

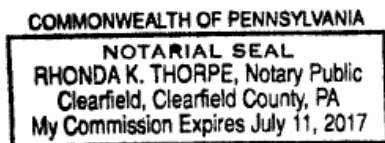
3
4 CERTIFICATE

5 I, Rhonda K. Thorpe, a Notary Public
6 in and for the Commonwealth of Pennsylvania, do
7 hereby certify:

8 That the witness whose testimony
9 appears in the foregoing deposition, was duly
10 sworn by me on said date and that the
11 transcribed deposition of said witness is a
12 true record of the testimony given by said
13 witness;

14 That the proceeding is herein recorded
15 fully and accurately;

16 That I am neither attorney nor counsel
17 for, nor related to any of the parties to the
18 action in which these depositions were taken,
19 and further that I am not a relative of any
20 attorney or counsel employed by the parties
21 hereto, or financially interested in this
22 action.



Rhonda K. Thorpe
Court Reporter

EXHIBIT D-5

Deposition of Guy Battestelli

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

BARBARA J. WINGARD, *
individually and as *
Administratrix of *
the Estate of TROY *
ROBERT LEE *
HOOFTALLEN, *

Plaintiff * Case No.

vs. * 2:12-cv-01500

GUY A. BATTLESTILLI; * District Judge
STEVEN E. JOHNSON; * Cathy Bisson
PENNSYLVANIA STATE * JURY TRIAL
POLICE; COMMONWEALTH * DEMANDED
OF PA; TASER® *
INTERNATIONAL, INC.; *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF

GUY BATTESTILLI

May 5, 2014

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is prohibited without authorization
by the certifying agency.

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VIDEOTAPED DEPOSITION
OF
GUY BATTESTILLI, taken on behalf of
the Plaintiff herein, pursuant to the
Rules of Civil Procedure, taken
before me, the undersigned, Rhonda K.
Thorpe, a Court Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania, at the offices of
Jefferson County Commissioners
Office, 155 Main Street, #202, Second
Floor, Brookville, Pennsylvania, on
Monday, May 5, 2014, beginning at
9:26 a.m.

A P P E A R A N C E S

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SUSAN A. CORRADO, ESQUIRE
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ATTORNEY

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Donahoe

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P R O C E E D I N G S

VIDEOGRAPHER:

My name is Sarah Dick.

I'm an employee of Boyle
Litigation, which is located
at 4660 Trindle Road, Suite
102, Camp Hill, Pennsylvania,
17011. This deposition is
being recorded on Monday, May
5th, 2014 at 9:26 a.m. in the
small conference room of the
Jefferson County Commissioners
Office, located at 155 Main
Street, Brookville, PA, 15825

This deposition is
being filmed in connection to
the case of Barbara Wingard,
et al., the Pennsylvania State
Police, et al. U.S. District
Court for the Western District
of Pennsylvania, Docket Number
12-cv-01500. The witness in
this deposition is Guy
Battestilli. This deposition

1 is being videotaped on behalf
2 of the Plaintiff.

3 ATTORNEY CORRADO:

4 This deposition is
5 taken pursuant to the Federal
6 Rules of Civil Procedure.
7 Sir, could you please state
8 your full name? I'm sorry.

9 COURT REPORTER:

10 Would you raise your
11 right hand, please?

12 -----
13 GUY BATTESTILLI, HAVING FIRST BEEN
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 -----

16 ATTORNEY CORRADO:

17 This deposition is
18 being taken pursuant to the
19 Federal Rules of Civil
20 Procedure.

21 EXAMINATION

22 BY ATTORNEY CORRADO:

23 Q. Sir, could you please state
24 your full name and spell your last
25 name for the record?

1 A. Guy Anthony Battestilli,
2 B-A-T-T-E-S-T-I-L-L-I.

3 Q. Mr. Battestilli, my name is
4 Susan Corrado. To my right is Tamara
5 Haken. We represent the Plaintiffs
6 in a lawsuit against you which is
7 currently pending in the United
8 States District Court for the Western
9 District of Pennsylvania. We're here
10 today to take your deposition. Have
11 you had your deposition taken before?

12 A. Yes.

13 Q. How many years ago was that?

14 A. Fifteen (15).

15 Q. Okay. We'll go into that a
16 little bit further later, and you've
17 been probably given these
18 instructions before at the last time
19 you had your deposition taken, but I
20 do want to go over them again
21 quickly. You were placed under oath.
22 You are expected to answer
23 truthfully. The court reporter is
24 going to take down everything that we
25 say. Therefore, I ask that you give

1 all your answers out loud orally so
2 the court reporter can take it down.
3 She can't take down nods of the head,
4 shrugs of the shoulders, or uh-huh.
5 So those sorts of things we would ask
6 you to refrain from and please try to
7 answer in words.

8 I will also ask that you wait
9 until I'm done asking my questions
10 before you give a response.

11 Likewise, I will wait until you are
12 done responding before I ask another
13 question. Again, it's so the court
14 reporter can take everything down.
15 If we are talking over each other, it
16 makes it difficult for her to get
17 everything down accurately.

18 My questions are not designed
19 to trick you. We are here to find
20 out your knowledge of the facts. And
21 while we don't want you guessing at
22 any answers, if you have a reasonable
23 estimate or somewhat of a
24 recollection of something, you can
25 tell us that.

1 You're represented here by
2 Counsel. If at any time during this
3 deposition you feel the need to have
4 a conference with your Counsel
5 outside of my hearing, that is
6 acceptable and we will allow you to
7 do that. The only thing I ask though
8 is that you'll answer any question
9 that is pending before you have that
10 conference. Okay?

11 A. Yes.

12 Q. And if at any time you need to
13 take a break, please let me know.
14 I'd like to start with a few
15 background questions. What is your
16 address?

17 A. 342 Pine Street, Punxsutawney,
18 Pennsylvania.

19 Q. And how long have you lived
20 there?

21 A. Twenty-six (26) years.

22 Q. And what is your ---?

23 ATTORNEY DONAHOE:

24 Let me put on the
25 record. Whenever I have state

1 troopers who are witnesses,
2 with respect to the personal
3 address of law enforcement
4 individuals, the request is
5 that be made confidentially so
6 that generally speaking
7 they're exposed to people that
8 could pose a threat to them if
9 they knew where they lived.
10 So that's the request that the
11 personal address remain
12 confidential.

13 ATTORNEY CORRADO:

14 That is not a problem.

15 BY ATTORNEY CORRADO:

16 Q. And, sir, what is your age?

17 A. Forty-nine (49).

18 Q. And what is your current
19 occupation?

20 A. I'm retired from the state
21 police.

22 Q. And when did you retire?

23 A. April 2013.

24 Q. Okay. And why did you retire?
25 Was it a forced retirement?

1 A. No, I had my 25 years in.

2 Q. Okay. So you're allowed to
3 retire after how many years? Twenty
4 (20), 25?

5 A. Twenty (20) or 25. I had 22
6 years and 3 years I bought military
7 time would be my 25.

8 Q. Okay. So if we could start
9 then, so state police was your last
10 employment then prior to your
11 retirement. Could you tell me when
12 you began with the state police?

13 A. May of 1990.

14 Q. May of 1990. Okay. And tell
15 me a little bit about what you had
16 done prior to that.

17 A. I was a borough police officer
18 for the Borough of Punxsutawney. And
19 prior to that, I worked as a
20 part-time correctional officer at the
21 Indiana County Jail. I was a
22 security guard for Pinkerton
23 Security. And prior to that I was in
24 the U.S. Army as a military
25 policeman.

1 Q. Okay. When you were a Borough
2 of Punxsutawney police officer, how
3 long was that for?

4 A. Three years.

5 Q. Three years. Okay. And can
6 you tell me a little bit about your
7 training with the state police?

8 A. Well, I attended the State
9 Police Academy in Hershey,
10 Pennsylvania from May until October
11 of 1990. And went to additional
12 training, update training, you know,
13 throughout the years.

14 Q. Okay. And we'll go into that
15 in a little bit more detail later.
16 Have you ever been a plaintiff or a
17 defendant in a lawsuit?

18 A. Yes.

19 Q. Can you tell me a little bit
20 about ---? One occasion, more than
21 one occasion?

22 A. Just one occasion.

23 Q. Can you tell me about that
24 case?

25 A. I had an individual. I was

1 attempting a traffic stop late at
2 night. The individual refused to
3 stop, and I used the pit maneuver on
4 her vehicle, and it subsequently
5 overturned and she was not injured in
6 the case, but they filed suit and she
7 was awarded damages.

8 Q. Okay. And do you know the
9 amount of the damages she was
10 awarded?

11 A. I think \$250,000.

12 Q. Okay. And was there an
13 internal investigation in connection
14 with that matter?

15 A. Yes.

16 Q. Okay. And what were the
17 results of the internal
18 investigation?

19 A. They said I was not acting
20 properly at that time and I got two
21 days off, I believe.

22 Q. Two days off?

23 A. Yeah.

24 Q. Okay. And so what happens
25 when you get two days off? Is your

1 pay docked for those two days?

2 A. Yes. Yes.

3 Q. Okay. And it becomes a record
4 in your file, I'm assuming?

5 A. Yes.

6 Q. Okay. And that was the only
7 punishment was the two days off?

8 A. Yes.

9 Q. Okay. So there was no other
10 instances that you have been a
11 plaintiff or defendant in a lawsuit?

12 A. No.

13 Q. Okay. And was that the
14 occasion where you were deposed
15 previously?

16 A. No. Actually there was
17 another --- it was a traffic accident
18 we investigated. An individual had
19 died as a result of the traffic
20 accident and it was a civil suit
21 between the business that owned the
22 vehicle and the driver of the
23 vehicle. The passenger was injured,
24 severely injured in that accident.

25 Q. Okay. So you were not named

1 as a party in that suit?

2 A. No, I wasn't.

3 Q. You were acting as a witness
4 in that case?

5 A. Yes.

6 Q. Okay. Did you give any
7 deposition in connection with the
8 case you mentioned earlier where you
9 got two days off?

10 A. No.

11 Q. Okay. Did you review any
12 information or documents in
13 preparation for today's deposition?

14 A. Yes.

15 Q. What did you review?

16 A. My statement from the initial
17 report and also the Internal Affairs
18 report, my statement I made at that
19 point.

20 Q. Okay. Anything else?

21 A. No.

22 Q. Other than your attorney, did
23 you speak to anybody in preparation
24 for today's deposition?

25 A. No.

1 Q. Okay. You had mentioned
2 earlier that you had gone through
3 some training with the state police
4 back in Hershey, Pennsylvania. I'm
5 assuming --- you said from May to
6 October of 1990?

7 A. Yes.

8 Q. Okay. Let's talk about that
9 training and what was involved. I'm
10 assuming you were trained on --- even
11 though it sounds like you had
12 training previously as a borough
13 police officer on various weapons,
14 can you specifically tell me about
15 some of the training that they taught
16 you? You had, I'm assuming, a
17 pistol?

18 A. Yes.

19 Q. Okay. Did you carry a block
20 or --- what kind of weapon were you
21 issued?

22 A. Initially a revolver.

23 Q. A revolver.

24 A. A regular revolver, yeah.

25 Q. Okay. And that changed at

1 some point. But during your
2 training, you were trained on a
3 revolver?

4 A. Yes.

5 Q. Okay. What other weapons?
6 Shotgun, machine gun?

7 A. Shotgun. We had mace
8 training, I believe, at that time.
9 Unarmed self-defense.

10 Q. Okay. What about a baton?

11 A. I think we had just a riot
12 baton was the only thing we had at
13 that point.

14 Q. Okay. A riot baton?

15 A. Yes.

16 Q. Is that one of the long ones
17 ---

18 A. The longer one.

19 Q. --- that don't expand?

20 A. Yes.

21 Q. Okay. And was that something
22 you were issued then?

23 A. Yes.

24 Q. Okay. And you carried on you?

25 A. We didn't carry that usually.

1 That was just part of the riot gear
2 if we had an incident we had to go to
3 as far as a riot. We would take
4 that. They gave you a helmet and the
5 riot baton.

6 Q. Okay. And you said mace. And
7 what about handcuffs?

8 A. We had handcuffing, yeah.

9 Q. Okay. Can you tell me a
10 little bit about the training with
11 the handcuffs? Were you trained to
12 cuff people in the front, cuff people
13 in the back? Which way were you
14 trained and were there different ---
15 were there different ways that you
16 were to use handcuffs depending on a
17 situation?

18 A. Basically you're to handcuff a
19 person behind their back.

20 Q. Okay.

21 A. Primarily, yes. We use them
22 occasionally on the front if they're
23 not --- if somebody's not violent or
24 not confrontational. I don't know
25 how else to explain that.

1 Q. Okay. If I could just recap,
2 usually you would cuff somebody in
3 the back. You could occasionally
4 cuff somebody in the front if they
5 were not confrontational or
6 non-violent?

7 A. Right.

8 Q. Okay. Did you mention you
9 said shotgun, machine gun?

10 A. I didn't say machine gun, but
11 shotgun, yeah.

12 Q. Okay. Not MP5 training?

13 A. No.

14 Q. No, okay. And you said mace.
15 And what about the Taser at the time?

16 A. We didn't have a Taser at that
17 point.

18 Q. Okay. At what point did you
19 --- was the Taser introduced?

20 ATTORNEY DONAHOE:

21 You mean for him or ---

22 ATTORNEY CORRADO:

23 Yes.

24 ATTORNEY DONAHOE:

25 --- in general in the

1 world?

2 A. Well, I don't even know. I
3 don't know. Early 2005, '04,
4 somewhere in that range.

5 BY ATTORNEY CORRADO:

6 Q. Somewhere in that range?

7 A. Probably. I'm not exactly
8 sure.

9 Q. Okay. And what about
10 shackles. Was there any training
11 with the shackles or was that
12 something that was not covered in the
13 training?

14 A. Mostly just handcuffing. I
15 don't recall having special training
16 on the shackles.

17 Q. Okay. And what type of ---
18 you said you were taught in --- did
19 you say defensive tactics or ---?

20 A. Yeah, unarmed self-defense.

21 Q. Okay. For lack of a better
22 word, what type of moves were you
23 trained in? I mean, what were some
24 of the techniques, the physical
25 techniques, that you were trained on?

1 I mean, was it karate or take-down?

2 I mean, you know, were there certain
3 moves that you were taught in order
4 to facilitate an arrest or when
5 unarmed ---?

6 A. You have a lot of cumalongs,
7 goose-neck cumalong, different
8 pressure points. It's so long ago.
9 It's hard to remember exactly what
10 all was back in there. A lot of
11 cumalongs and pressure points, those
12 type of things.

13 Q. Okay. Were you given some
14 sort of training policy or was there
15 a written policy regarding use of
16 force with the Pennsylvania State
17 Police?

18 A. Yes.

19 Q. And what is that? I mean, is
20 there a written ---? I'll start with
21 this. Is there a written policy?

22 A. Yes.

23 Q. Okay. And what is that
24 called?

25 A. Use of force continuum.

1 Q. Okay. And what does that say,
2 to your knowledge?

3 A. It was just showing that there
4 was different levels of force to use
5 starting with verbal up through
6 physical and up through deadly force.

7 Q. Okay. Tell me where your
8 different tools --- you've got a
9 toolbox; right? For lack of a better
10 word; right? You have a toolbox.
11 You have hand-to-hand sort of moves
12 like you talked about. You've got
13 handcuffs. You've got shackles. You
14 have your mace. You have your
15 pistol. You have your Taser at some
16 point. Where do all these things
17 fall on your ---?

18 ATTORNEY DONAHOE:

19 Let me ask for one
20 thing.

21 ATTORNEY CORRADO:

22 Uh-huh (yes).

23 ATTORNEY DONAHOE:

24 We had sent you the use
25 of force wheel, but I don't

1 have it. Are you going to
2 show it to him?

3 ATTORNEY CORRADO:

4 We did not get that.

5 ATTORNEY DONAHOE:

6 Okay. All right. And
7 it's online and all that
8 stuff. I just don't have it
9 right here. And I didn't know
10 if you were going to show it
11 to him or not. But that's
12 okay. He'll probably remember
13 without looking at it.

14 ATTORNEY CORRADO:

15 Okay. Yeah, we were
16 not provided with that.

17 ATTORNEY DONAHOE:

18 We usually send it out
19 in the packet in all of these
20 cases.

21 ATTORNEY CORRADO:

22 You know, I don't think
23 we got it.

24 ATTORNEY DONAHOE:

25 Okay. I'll send it to

1 you. It's online somewhere
2 too on their line.

3 ATTORNEY CORRADO:

4 Okay.

5 ATTORNEY DONAHOE:

6 I think it's on your
7 guys website, isn't it? Okay.
8 He's retired.

9 A. I don't care anymore. I don't
10 want to see it anymore.

11 ATTORNEY DONAHOE:

12 Well, it's out there.
13 I apologize for not sending it
14 to you.

15 ATTORNEY CORRADO:

16 No, that's okay.

17 ATTORNEY DONAHOE:

18 I thought for sure I
19 did.

20 ATTORNEY CORRADO:

21 Okay.

22 BY ATTORNEY CORRADO:

23 Q. So if you could, to your best
24 recollection, go through the policy
25 as you understood it in terms of

1 where all these tools in your toolbox
2 fall into the policy?

3 A. Well, you use whatever force
4 is necessary to overcome the force
5 that's being used against you.

6 Q. Okay.

7 A. There's not where I have to
8 use one before the other or that
9 depends. Each circumstance is
10 different.

11 Q. Okay.

12 A. I mean, if it's strike with
13 deadly force, you'd use deadly force.
14 There's nothing in the requirement
15 that, you know, use less force.

16 Q. Okay. So they don't say, for
17 example, the Taser can only be used
18 in certain circumstances? Does it
19 specifically address the use of the
20 Taser?

21 A. I don't recall anywhere that's
22 --- anything specific saying you
23 can't use it in certain
24 circumstances.

25 Q. Okay. So speaking of the

1 Taser, you said it was introduced in
2 2004, 2005?

3 A. That's a rough guess. I'm not
4 even, you know, --- I can't say
5 exactly. I don't recall when we
6 actually got started on that.

7 Q. That's okay. But at some
8 point when something new is
9 introduced, right, a new tool in your
10 toolbox ---

11 A. Right.

12 Q. --- you have some sort of
13 training on it?

14 A. Yes.

15 Q. Can you tell me about that
16 training?

17 A. They went through the
18 description as far as how it works,
19 gave you the basic functions, what
20 the requirements are as far as
21 testing it. Before every shift
22 you're supposed to test it and make
23 sure it's properly working.

24 Q. Is that like a spark test?

25 A. A spark test, yes.

1 Q. Okay.

2 A. And we went through firing
3 sequence. We fired it twice, live
4 fire into a target.

5 Q. Did you have to be subjected
6 to a Taser test as part of your
7 training?

8 A. No. We had people that
9 volunteered to do it. I wasn't one
10 of those. I didn't feel a need to do
11 it. But there were people in our
12 class that did take hits from the
13 Taser.

14 Q. Okay. Could you tell me a
15 little bit about the probe versus the
16 dry stun?

17 A. Well, obviously with the
18 probe, you're going to be further
19 away from the individual. It's going
20 to be safer for you than using a dry
21 stun at the EO. If you get a proper
22 spread and good contact with both the
23 probes, it's going to incapacitate
24 the person as far as them being
25 physically unable to do anything. A

1 dry stun is just a pain compliance.
2 It would be similar if I used a
3 pressure point or something else on
4 them. It's not going to prevent them
5 from being able to react or continue
6 the action that they're in.

7 Q. Okay. So to dry stun, you
8 need to get almost on the skin?

9 A. Or contact with the body,
10 yeah.

11 Q. Contact with the body. Okay.
12 Can you only do the probe once on the
13 gun?

14 A. As long as the probes are
15 engaged you can reactivate. It's
16 going to cycle for five seconds
17 automatically if you let the trigger
18 off. You leave the trigger on, it
19 will stay on until you let it go, or
20 you can reactivate it if you leave
21 the prongs in.

22 Q. Okay. What were some of the
23 risks of the Taser that you learned
24 during training?

25 A. I mean, basically to watch,

1 not shoot somebody --- try not to
2 shoot somebody in the face, the head
3 where a probe can go in an eye. They
4 do penetrate pretty well.

5 Q. Okay. And why not the head?
6 For the penetration purpose or ---?

7 A. Well, just the eyes. Your
8 throat and eyes and things like that.
9 You want it in the center of the
10 body.

11 Q. Okay. What other dangers
12 regarding the Taser were you trained
13 on?

14 A. Boy, I don't recall any
15 specific on that.

16 Q. Okay. Did they talk about the
17 psychological or emotional stress of
18 a Taser?

19 A. I don't recall anything about
20 the stress on that.

21 Q. Okay. Did they talk to you at
22 all about the dangers of the Taser or
23 did Taser at any time come in and
24 discuss with you the dangers of the
25 use of a Taser?

1 A. We had known it was --- you
2 know, some individuals had died after
3 being tasered, but not if it was, you
4 know, still considered a nonlethal
5 use of force.

6 Q. Okay. And what were the
7 causes of the death?

8 ATTORNEY DONAHOE:

9 Well, you know, you're
10 probably asking an expert
11 question.

12 ATTORNEY CORRADO:

13 Right.

14 ATTORNEY DONAHOE:

15 I think you guys have
16 already dropped the case
17 because they don't cause it,
18 but that's okay.

19 ATTORNEY CORRADO:

20 You know, at least
21 trying to get his knowledge of
22 what ---.

23 ATTORNEY DONAHOE:

24 All right. What did
25 they tell you was the cause of

1 these people dying, if they
2 did?

3 A. I don't even recall that. I
4 think they said something about not
5 using it on somebody with a
6 pacemaker. It would cause
7 interference with that. But beyond
8 that, I don't know of anything else.

9 BY ATTORNEY CORRADO:

10 Q. Okay. Have you heard of the
11 Taser causing injury or death in
12 other cases? I mean, other than your
13 training, what have you heard through
14 discussions with other people, with
15 reading the newspaper, with just
16 learning generally through injuries
17 or death that have occurred from the
18 use of the Taser?

19 A. Nothing specific. Like I
20 said, there was a small percentage of
21 the population that had died after
22 Taser had employed. I think that was
23 part of the thing why they didn't
24 want us to go through the incident
25 ourselves when we went through our

1 training practice. You know, it
2 wasn't mandatory to do that because
3 there is --- if you have an unknown
4 heart condition or something like
5 that, you know, they just didn't want
6 to take the risk with that type of
7 thing either.

8 Q. So that's why it wasn't
9 mandatory and they were asking for
10 volunteers?

11 ATTORNEY DONAHOE:

12 If you know.

13 BY ATTORNEY CORRADO:

14 Q. If you know.

15 A. Yeah, I don't know if that's
16 why they did it. I'm not sure they
17 still even will let you take a Taser
18 if you were requested. I'm not sure
19 if it's --- you know, it wasn't
20 mandatory for it.

21 Q. Okay. And have you learned
22 that since then that they don't make
23 anyone take the Taser?

24 A. I don't know.

25 Q. You don't know. So that did

1 not change during your tenure with
2 the state police?

3 A. No.

4 Q. Okay. What was the policy of
5 the state police regarding tasing
6 people while they were cuffed, if
7 they had one?

8 A. I don't think there's anything
9 really about that.

10 Q. The state police never
11 addressed the use of a Taser while a
12 suspect had been handcuffed?

13 A. Not as far as I know.

14 Q. Okay. Are you familiar with
15 the term positional asphyxia?

16 A. Yes.

17 Q. Okay. What do you understand
18 that to mean?

19 A. Basically if we have someone
20 in a handcuffed position and they're
21 laying on their abdomen, that they
22 could possibly lose --- be unable to
23 breathe just from the weight of their
24 own body on --- compressing on the
25 chest.

1 Q. Okay. And did you learn about
2 that as part of your training?

3 A. Yes.

4 Q. And what did you learn? First
5 of all, was this during your basic
6 training or was this in training
7 subsequent to your basic training?

8 A. I think that was subsequent.

9 Q. Okay. Can you tell me what
10 you learned during that training?

11 A. Well, they just didn't want
12 you to ---. Once a person is secured
13 to try to roll them on their back or
14 on their side so they're not laying
15 flat down on top of them. And make
16 sure you don't put weight on somebody
17 while they're in that position.

18 Q. Okay. And who was this
19 training given by?

20 A. We do our update training by
21 the training academy. There's
22 regional offices in Franklin and
23 Greensburg. When we do our update
24 training, that's usually where that
25 type of training was done.

1 Q. Okay. And was that on one
2 occasion or more than one occasion,
3 if you recall?

4 A. We had the update training
5 every year in use of force and use of
6 the Taser was annual.

7 Q. So when you say that was
8 annual, every year you would have
9 updated training on the use of the
10 Taser?

11 A. Yes.

12 Q. Okay. And did anything change
13 over time? I mean, what was the
14 purpose of updating the Taser
15 training?

16 A. So you're familiar with your
17 weapon. We did handcuffing every
18 year, baton strikes. Same thing.
19 Just so you're proficient and don't
20 forget from the last year how to use
21 everything.

22 Q. Okay. And this positional
23 asphyxia training, was that on one
24 occasion or more than one occasion?

25 A. That wasn't all the time. I

1 had it before but I don't recall how
2 often it was.

3 Q. Okay. As part of your
4 training, did they ever speak about
5 drugs in a person's system could
6 increase the risk of positional
7 asphyxia?

8 A. Not to my recollection.

9 Q. Okay. Did you ever learn or
10 were taught that --- I think you
11 already said this, that kneeling or
12 placing weight on a subject increases
13 the risk of positional asphyxia?

14 A. Yes.

15 Q. Did they talk about where on
16 the body or was it any part of the
17 body would --- could increase the
18 risk?

19 A. I would think the
20 chest/abdomen area.

21 Q. Chest/abdomen area?

22 A. Yeah.

23 Q. Okay. And what about the
24 back?

25 A. Well, if you're laying on the

1 front, I mean, obviously on the back.

2 Q. Okay.

3 A. In those areas, yeah.

4 Q. Okay. Did they discuss that
5 natural reaction to oxygen deficiency
6 is to cause a person to struggle more
7 violently so when somebody might not
8 be getting enough oxygen, they might
9 struggle more and that could be a
10 sign of positional asphyxia?

11 A. I don't recall.

12 Q. Okay. Did you ever learn that
13 the unresponsiveness of a subject
14 could indicate positional asphyxia?

15 A. No.

16 Q. Okay. Did you learn as part
17 of your training that positional
18 asphyxia is increased when physical
19 restraint includes behind the back
20 handcuffing combined with placing the
21 subject in a stomach-down position?

22 A. Could you repeat that?

23 Q. Sure. Did you learn that the
24 risk of positional asphyxia is
25 increased when a subject is

1 handcuffed behind the back and the
2 subject is placed down on their
3 stomach?

4 A. Yeah, that's what I said. The
5 sooner we take them over a recovery
6 position and put them on their back
7 at that point, yeah.

8 Q. Okay. And I just want to
9 touch back on the Taser briefly. Did
10 your model Taser ever change over
11 time? I mean, from when you were
12 first introduced in 2004, 2005?

13 A. I think it was the same one.

14 Q. Okay. And do you recall the
15 model Taser that you used?

16 A. No idea.

17 Q. Okay. Was part of your
18 training --- did they teach you how
19 to recognize breathing difficulties
20 or loss of consciousness?

21 A. Oh, yeah. We had medical
22 training. Yeah.

23 Q. Okay. And what did that
24 entail, your medical training?

25 A. Oh, basic CPR, first aid, that

1 type of ---.

2 Q. Okay. And was that renewed
3 yearly or how often would you get
4 that type of training?

5 A. It was yearly. Then I think
6 they changed it later on. We did CPR
7 alternating. We did first aid one
8 year and CPR the next. I think it
9 was every two-year cycle, I think it
10 was.

11 Q. Okay. So you were certified
12 to give CPR?

13 A. Yes.

14 Q. Okay. And what is the state
15 police policy on giving CPR? I mean,
16 if you have a subject that's going
17 into cardiac arrest or stopping
18 breathing, I mean, what's the policy
19 regarding treating that subject?

20 A. Well, if they don't have a
21 pulse or they're not breathing, you
22 would perform CPR on them.

23 Q. Okay. And is that mandated?
24 Is that ---?

25 ATTORNEY DONAHOE:

1 You mean do they have
2 to even if an ambulance is
3 outside?

4 ATTORNEY CORRADO:

5 Yes.

6 A. We have to give appropriate
7 care, yeah.

8 BY ATTORNEY CORRADO:

9 Q. And is there a name of that
10 policy? I mean, do you know what
11 that written policy is called?

12 A. No.

13 ATTORNEY DONAHOE:

14 I mean, there's
15 policies out there. They
16 usually have numbers, not
17 names.

18 ATTORNEY CORRADO:

19 Okay.

20 BY ATTORNEY CORRADO:

21 Q. You wouldn't happen to know
22 the number of that policy, do you?

23 A. No.

24 Q. Okay. Okay. Let's turn now
25 to October 18th, 2010. What shift

1 were you working?

2 A. 11:00 p.m. to 7:00 a.m.

3 Q. Okay. And you were with
4 Trooper Johnson?

5 A. Yes.

6 Q. Okay. Was he somebody you
7 normally worked with?

8 A. Yes.

9 Q. Okay. And how long had you
10 been working with him?

11 A. Four or five years.

12 Q. Okay. And your title at the
13 time was?

14 A. Trooper first class.

15 Q. Trooper first class. Okay.
16 Can you tell me a little bit about
17 --- was that the same title you held
18 when you first came into the state
19 police?

20 A. No. Well, trooper. Then
21 trooper first class after you have
22 like 12 years.

23 Q. Okay.

24 A. You became trooper first
25 class.

1 Q. Okay. And then where do you
2 go from there? Trooper second class
3 and I don't know.

4 A. No, that's all. That's just
5 the basic, you know, unless you get
6 promoted to a corporal or work up the
7 ranks that way.

8 Q. Okay. So you were trooper
9 first class at the time. And what
10 was, if you know, Trooper Johnson's
11 rank at the time?

12 A. Trooper.

13 Q. Trooper, okay. So were you
14 considered the senior ---

15 A. Yeah.

16 Q. --- trooper on the scene?

17 A. Yes.

18 Q. Okay. So tell me a little bit
19 about the shift. It's an 11:00 to
20 7:00. Is that a shift you normally
21 would work?

22 A. Yes.

23 Q. Okay. And a call comes in.
24 And you said that you had done the
25 spark test earlier ---

1 A. Yes.

2 Q. --- that day? That was part
3 of your training, so you did your
4 spark test on your Taser. I assume
5 you were in uniform?

6 A. Yes.

7 Q. Okay. What's on your tool
8 belt at this point?

9 A. My pistol, handcuffs, baton,
10 the Taser. I think that's all.

11 Q. Okay. Pepper spray?

12 A. Pepper spray, yes.

13 Q. Okay. And the baton you have,
14 is it the small kind that flips out?

15 A. Yes, the ASP baton.

16 Q. Okay. Okay. And did you have
17 your --- do you have a hat? You had
18 full uniform and a hat?

19 A. I don't think I had my hat on
20 riding in a car.

21 Q. Okay. So the call comes in.
22 What time do you think that this was?

23 ATTORNEY DONAHOE:

24 To where? You mean to
25 911 or to him because ---?

1 ATTORNEY CORRADO:

2 To him.

3 ATTORNEY DONAHOE:

4 Okay. When did you, is
5 the question, receive the
6 call?

7 A. It was a little after 11:00.
8 I can look at my report but ---.

9 ATTORNEY CORRADO:
10 Could you mark this?
11 (Battestilli Deposition
12 One marked for
13 identification.)

14 A. I don't have a time on here.
15 It's shortly after 11:00. It was
16 early in the shift.

17 BY ATTORNEY CORRADO:

18 Q. Mr. Battestilli, I'm going to
19 show you what's been --- Counsel's
20 showing you what's been marked
21 Exhibit One.

22 A. Okay.

23 Q. Do you know what this is?

24 A. Yeah, our communications memo.
25 That's the way they keep track of our

1 activities during our shift.

2 Q. Okay.

3 A. The PCOs would keep this log.

4 Q. Is this something that you
5 maintain or is it something that the
6 office maintains?

7 A. Our dispatcher.

8 Q. The dispatcher?

9 A. Our PCO, communications
10 officer, would start this log when we
11 start our shift.

12 Q. Okay.

13 A. And any activities he assigned
14 us to on that shift would be logged
15 on it, or things we'd call on would
16 log on this paper.

17 Q. Okay. Could you walk me
18 through this briefly? It's a little
19 bit unclear to me. Under patrol
20 zones, you have a CO-1 number. That
21 first one, is this the call that
22 comes in regarding the incident in
23 question?

24 A. Yes.

25 Q. Okay. Can you tell me what

1 that code means, if you know?

2 A. That's just a report number.

3 Q. That's a report number?

4 A. Yes.

5 Q. Okay.

6 A. That would be the incident
7 report this was done under.

8 Q. Okay. So the numbers, itself,
9 don't mean anything? It's just the
10 incident number?

11 A. Yeah.

12 Q. Okay. Moving to your right,
13 you have a code one, two, and three.
14 What does that code one mean that was
15 marked?

16 A. The dispatcher would normally
17 assign a priority as far as your
18 response, one being the minor. Two
19 would be a more expedited response,
20 and three would be a full emergency
21 response.

22 Q. Okay.

23 A. It would be a shooting or
24 something like that, active shooter
25 would be a three.

1 Q. Okay.

2 A. So you're going to respond
3 with lights and siren.

4 Q. Okay.

5 A. Two would be expedite. You
6 might use your lights, might not, but
7 just depending what your
8 circumstances are, you know.

9 Q. Okay. And the time, 2322, is
10 that the time it gets to you or is
11 that the time ---?

12 A. That's the time he assigned it
13 to us.

14 Q. Okay. All right. So the call
15 comes in to you through the mobile,
16 the radio dispatcher?

17 A. Yes.

18 Q. Okay. And the 2337 number,
19 ---?

20 A. That would have been when we
21 arrived at the scene.

22 Q. Okay. All right. And then
23 the in-service number, does that mean
24 that you've left the scene and you're
25 available for another call?

1 A. Yes.

2 Q. Okay. Thank you for that.

3 Okay. So tell me what happened.

4 You're in your vehicle. I don't want
5 to put words in your mouth. You're
6 in your vehicle when the call comes
7 in?

8 A. Yes.

9 Q. Okay. And tell me what you
10 hear.

11 A. Dispatcher told us that we had
12 to assist for a mental health case.
13 Gave us the location. Advised us
14 that he had --- I think he had talked
15 to his brother. The individual was
16 threatening violence, was a fighter.
17 You know, there could be problems
18 with him there.

19 Q. Okay. So do you go right to
20 the scene?

21 A. Yes.

22 Q. Okay. And what happens when
23 you get there?

24 A. We pulled in, I guess, an
25 access road. It would be in front of

1 the residence. And we pulled up and
2 were contacted by Timmy Hoof tallen,
3 the decedent's brother.

4 Q. Go ahead.

5 A. And he basically said that his
6 brother had taken a bunch of pills, a
7 bunch of Mucinex, and he was violent
8 and tearing up things, tearing up the
9 place is what his words were.

10 Q. Uh-huh (yes).

11 A. We needed to come in there.
12 Ms. Hall then came out also and
13 reiterated basically the same thing.
14 He's violent and threatening and we
15 needed to do something.

16 Q. Okay. Did someone ask whether
17 or not it had been prescription
18 Mucinex or not?

19 A. I don't think at that point,
20 no.

21 Q. Okay. Did anyone mention
22 whether or not Mr. Hoof tallen had
23 tried to kill himself earlier? Not
24 that night, but previously?

25 A. I don't recall there right in

1 the initial contact. I don't
2 believe.

3 Q. Okay. Anything else that you
4 recall being told by the decedent's
5 brother Timmy or Ms. Hall?

6 A. Let me refer to my notes to
7 refresh my memory, make sure. Okay.
8 He did say that he attempted to
9 commit suicide prior to that at the
10 initial contact. No, that was about
11 all at that point then. It was very
12 short. They started walking away
13 from the car even while I was still
14 wanting to question them further.
15 And they started heading back to the
16 residence.

17 Q. How many minutes did it take
18 you to get there?

19 A. Well, it was 14 minutes, 15
20 minutes.

21 Q. Okay. And can you describe
22 the home for me?

23 A. Like a doublewide trailer
24 style.

25 Q. Okay. And where was EMS at

1 this time, if you know?

2 A. We were told they were staging
3 --- there's a little church about a
4 quarter-mile up the road from where
5 we were at.

6 Q. Okay. And who told you that?

7 A. Our dispatcher.

8 Q. Okay. And you were told that
9 on the way over there?

10 A. Yes.

11 Q. Okay. And on your tool belt,
12 do you also have a radio?

13 A. Well, we have portable radios,
14 yeah. I don't usually have it on my
15 belt.

16 Q. Okay. Do you have a cell
17 phone?

18 A. Yes.

19 Q. Okay. And does that cell
20 phone have any --- it doesn't have
21 any radio capabilities?

22 A. No.

23 Q. Just Pennsylvania State
24 Police?

25 A. Just my personal --- no, it's

1 my personal cell phone.

2 Q. It's your personal cell phone.
3 Okay. So your portable radio was in
4 the car?

5 A. Yes.

6 Q. Okay. And would that be
7 something you would normally do is
8 leave your radio in the car?

9 A. It depends. I mean, I don't
10 have --- I have a belt holster for
11 it. So it's just another thing
12 that's in the way, you know.

13 Q. Okay. So you understand that
14 EMS is staged, you said, a
15 quarter-mile down the road?

16 A. Yes.

17 Q. Okay. So Hall and Timmy start
18 to walk back to the house. You and
19 Trooper Johnson follow. And what
20 happens?

21 A. We enter the back door of the
22 house. There's like a little
23 hallway. We come up. The kitchen
24 will be off to the left and then
25 straight ahead is the living room.

1 And we walked into the living room.

2 And Timmy kind of stayed back at the
3 doorway of the kitchen entrance. And
4 Troy Hooftallen was sitting on a sofa
5 and his mother was sitting next to
6 him.

7 Q. Okay. Is the kitchen open to
8 the living room?

9 A. There's an entrance on both
10 ends of the living room, and there's
11 an open area. It's a sofa, a
12 loveseat, and there's an open area
13 there that look through into the
14 kitchen.

15 Q. Okay. So is there a coffee
16 table?

17 A. Yes.

18 Q. And where's the coffee table
19 in relation to where?

20 A. It's right in front of Troy
21 and his mother. It's parallel to the
22 couch that they're sitting on.

23 Q. Okay. And is there other
24 furniture in the room?

25 A. There's a TV, I think, to my

1 right. I'm not sure behind me if
2 there's anything back that way.

3 Q. Okay. And where are the
4 bedrooms, if you know?

5 A. Never went back to that part
6 of the house, so I assume back the
7 hallway that --- near where we came
8 in at.

9 Q. Okay. And where's Ms. Hall at
10 this time?

11 A. I believe she's standing in
12 the kitchen or in the back of the
13 living room, somewhere in that back
14 corner.

15 Q. Okay. Do you see anybody
16 else?

17 A. No.

18 Q. Okay. So is Troy to the right
19 or to the left of his mother on the
20 couch?

21 A. To the left. He's to my right
22 and his mother's to the left.

23 Q. He's to your right?

24 A. Where I'm facing them, he's to
25 my right and she's to the left.

1 Q. Okay. So what happens next?

2 A. I introduced myself. I walked
3 over to the coffee table and told
4 them I'm Trooper Battestilli from the
5 state police, and I reached my hand
6 out to him. He stood up and shook
7 hands with me and sat back down on
8 the couch and just proceeded to talk
9 to him about what's going on tonight.

10 Q. Okay. And what did you say to
11 him specifically?

12 A. I just asked him what's going
13 on, you know. He said he was
14 agitated. He just said he wanted to
15 fight. I'm the bad mother fucker
16 around and that type of thing. I
17 just tried to engage him in
18 conversation just what's --- I said
19 you want to go to a hospital, and he
20 wouldn't respond to me as far as
21 answering questions like that. And
22 he just kept going back to, you know,
23 how bad he is and he's going to
24 fight. He wants to kick some ass
25 tonight.

1 Q. Is he still seated on the
2 couch at this point?

3 A. Yeah.

4 Q. Okay. And where's Trooper
5 Johnson at this point?

6 A. Just to my left to the rear
7 behind me.

8 Q. Okay. So are you standing in
9 front of the coffee table or are you
10 in front of the coffee table? Where
11 are you?

12 A. I'm in the front of the coffee
13 table, about the center of the room
14 and then Steve's off to my left a
15 little behind me.

16 Q. Okay. And Troy is still
17 seated at this point and the mother
18 is still there?

19 A. Yes.

20 Q. Okay. So what happens next?

21 A. We just continued that way.
22 He at one point had said that, oh, I
23 figured out the meaning of life. I
24 said, boy, I'd like to know that too.
25 Why don't you tell me what it is. He

1 obviously didn't respond to that.
2 And he just kept repeating it, you
3 know. He wanted to fight. He was
4 going to kick some ass, you know, how
5 bad he is. At one point he was
6 sitting on the couch. He stood up.
7 He had a bottle of, I think orange
8 Crush pop, a plastic bottle in front
9 of him. He stood up, grabbed it, and
10 just crushed it with both hands but
11 he wanted to rip it in half. And his
12 girlfriend and his mother both yell
13 at him to knock it off, that you're
14 going to make a mess. And he sat
15 back down, put the bottle down.

16 Q. Okay.

17 A. Through this, you know, every
18 once in a while he'd open it and take
19 a sip and put it back on the table.

20 Q. Did the meaning of life
21 conversation happen before or after
22 the pop?

23 A. I don't recall. Let me refer
24 to my report. I think it was after
25 the bottle of pop.

1 Q. Okay. Does Troy get up after
2 the meaning of life conversation?

3 A. Yes.

4 Q. Do you recall? Okay. Did you
5 snicker when he mentioned the meaning
6 of life?

7 A. First of all, I said, hear, I
8 said, --- I kind of laughed and said,
9 well, I'd like to know what the
10 meaning of life is too.

11 Q. Okay. Is it at that point
12 that he gets up and stands up from a
13 seated position?

14 A. I don't think it was directly
15 at that point.

16 Q. Okay.

17 A. It was a little later. He
18 still kept --- I asked him about
19 going to the hospital and trying to
20 get him to talk and he wouldn't.
21 They're worried. Your parents are
22 worried about you. And after a
23 minute, a couple other minutes is
24 when he finally got up again and
25 approached us.

1 Q. Okay. Did anybody else
2 comment about this meaning of life
3 comment that he made?

4 A. No, no one else really said
5 anything. It was just me and Troy
6 talking.

7 Q. Okay. So what happens next?
8 He gets up and then what happens?

9 A. He has a ball cap there. He
10 put his ball cap and came walking
11 over to us and he grabbed my left arm
12 and Steve's right arm because he was
13 facing both of us and started to
14 forcibly push and said let's go
15 outside.

16 Q. Okay.

17 A. And I told him no, we're not
18 going outside, we can talk here and
19 everything's okay.

20 Q. Why would you not let him go
21 outside?

22 A. Because I have no idea what
23 he's going to do at that point. If I
24 can keep him in the same location
25 here and where we have things under

1 control on him.

2 Q. Okay.

3 A. I don't want him running off
4 through the woods where we have to
5 take off, you know. He's kind of
6 controlled where he's at.

7 Q. So that was the fear if he
8 went outside was that he would run
9 off?

10 A. Well, that and I don't know
11 what's outside, if he has weapons
12 outside or, I mean, it's dark outside
13 and you can't see as well. We have a
14 smaller area where we can keep him
15 confined to. It's better to keep him
16 in that one location.

17 Q. Okay. So what happens next?

18 A. Well, I told him no, and you
19 know, held my ground, wouldn't move
20 backwards. He let go of us and he
21 ---. Steve was off to the left here
22 at this point and he's in between us.
23 He kind of put his arms down and he
24 turned and faced toward Trooper
25 Johnson and just stared at him. And

1 he did that for a second. You could
2 see him. He made a fist and he wound
3 back and you could see the punch
4 coming. He threw a roundhouse punch
5 at Steve, which Steve was able to
6 block. And then they both --- I went
7 to him and grabbed him. We all went
8 onto the couch.

9 Q. Okay. I just want to back up
10 for a minute. Did he tell you why he
11 wanted to go outside?

12 A. He said he wanted to talk.

13 Q. Okay. And how long did this
14 eye contact last?

15 ATTORNEY DONAHOE:

16 You mean the eye
17 contact between the assailant
18 and Trooper Johnson?

19 ATTORNEY CORRADO:

20 Yes.

21 ATTORNEY DONAHOE:

22 Okay. If you can ---.

23 A. Not real long. I mean, ten
24 seconds, something where he wasn't
25 ---.

1 BY ATTORNEY CORRADO:

2 Q. Okay. And who broke the eye
3 contact, if you know?

4 ATTORNEY DONAHOE:

5 If it was broken.

6 A. I don't even know if it was
7 broken, yeah. I really couldn't say
8 at that point. You could see Troy
9 tense up and he started winding up.

10 BY ATTORNEY CORRADO:

11 Q. Okay. So to your knowledge,
12 Johnson did not break eye contact?

13 A. I don't know.

14 Q. Okay. He didn't look away or
15 make some other move that could be
16 ---? He didn't back up?

17 A. No, he just stood there and
18 was watching him.

19 Q. Okay. So tell me a little bit
20 more about this punch. You said it
21 was a roundhouse or I don't want to
22 put words in your mouth.

23 A. Yeah, it was a little haymaker
24 of a type. Yeah, it was just a real
25 --- he wound back and you could see

1 the arm coming all the way around
2 just full extended.

3 Q. Okay.

4 ATTORNEY DONAHOE:

5 You should probably say
6 which arm.

7 BY ATTORNEY CORRADO:

8 Q. Yes.

9 A. Right arm, yeah. Yeah, right
10 arm.

11 Q. So it's his right arm. And
12 you said he blocked the punch. Does
13 he use his left arm to block it or
14 ---?

15 A. I really couldn't say for
16 sure. I mean, it was just --- it all
17 went into a heap at that point when
18 the punch came around.

19 Q. Okay. Did he make contact
20 though or he --- when you say he
21 blocked it, he actually made contact
22 with Trooper Johnson?

23 A. Yeah. I couldn't say exactly
24 how. The punch came and then we all
25 end up --- Steve ended up grabbing

1 him so I'm not sure where. You know,
2 it was all just a blur at that point.

3 Q. Okay.

4 A. It all fell together.

5 Q. And where is his mother at
6 this point? Tell me where the mother
7 is at this point.

8 A. As far as I know, still on the
9 couch.

10 Q. Okay. And where are Ms. Hall
11 and Timmy? Are they still where they
12 had been originally?

13 A. To the best of my knowledge,
14 yes.

15 Q. Okay. So tell me how the fall
16 happens. Now, you said everybody is
17 sort of now grabbing each other?

18 ATTORNEY DONAHOE:

19 I don't think he said
20 that.

21 BY ATTORNEY CORRADO:

22 Q. I'm sorry. Tell me again what
23 happens.

24 A. Well, the punch went around,
25 they were together.

1 Q. Right.

2 A. And they fell backwards. I
3 was coming over to grab ahold of Troy
4 and we all kind of fell onto a pile
5 on the loveseat.

6 Q. So is this different from the
7 couch that he had been sitting on
8 originally?

9 A. Yes. This is perpendicular to
10 the --- you know, the left wall where
11 the overhang to the window is to the
12 left side of the room.

13 Q. Okay. And what are you trying
14 to accomplish by ---? You're trying
15 to grab Troy from behind?

16 A. Yeah.

17 Q. Okay. And do you lose your
18 balance and then you all go onto the
19 couch or is Trooper Johnson pulling
20 him onto the couch?

21 A. They all just tumbled onto the
22 couch. I mean, I'm behind them so I
23 can't really grab anything at that
24 point.

25 Q. Okay. So what is the position

1 of Trooper Johnson now on the couch?

2 A. He would be on his back like
3 dangling over the left arm of the
4 couch with Troy directly on top of
5 him.

6 ATTORNEY DONAHOE:

7 When you say couch, you
8 mean the loveseat?

9 A. The loveseat, yes.

10 BY ATTORNEY CORRADO:

11 Q. Loveseat, okay. And does
12 anybody get hurt in the fall?

13 A. I don't know at that point if
14 anything's hurt. I think Steve later
15 said that he had hit his head and
16 shoulders, whatever, on the wall
17 there.

18 Q. Okay. You didn't know at that
19 point that he had hit his head?

20 A. No.

21 Q. Okay. And what about Troy?
22 Does Troy hit his head on his way
23 down?

24 A. I don't know. They were both
25 up towards that wall there at the

1 upper end of the couch.

2 Q. Okay. Is there an arm on the
3 wall or --- I'm sorry. Is there an
4 arm on the side of the couch?

5 ATTORNEY DONAHOE:

6 Again, couch or
7 loveseat?

8 BY ATTORNEY CORRADO:

9 Q. Or loveseat, sorry.

10 A. Loveseat. Loveseat, yeah.
11 Yes.

12 Q. Can you describe the loveseat
13 a little bit to me?

14 A. The standard loveseat. It has
15 two arms and a back and ---.

16 Q. Okay.

17 A. Yeah.

18 Q. Is it one of those big cushy
19 ---

20 A. No, I don't think it's ---.

21 Q. --- loveseats?

22 A. No, it's not the overstuffed.

23 Q. Okay.

24 A. I don't think there's any
25 pillows there either that I recall.

1 Q. No pillows. Okay. All right.
2 So he's on his back on the loveseat
3 and Troy is over him?

4 A. Yes.

5 Q. And where are you?

6 A. I'm behind Troy, you know,
7 knocking on his buttocks.

8 Q. Okay. And where is Trooper
9 Johnson's feet at this point?

10 A. On the floor, I believe.

11 Q. On the floor.

12 A. Yeah.

13 Q. And where is Troy's feet?

14 A. Also on the floor.

15 Q. Okay. And your feet are on
16 the floor?

17 A. Yes.

18 Q. And you have your knees, you
19 said ---?

20 A. In his buttocks, lower back
21 area.

22 Q. Okay. And both knees?

23 A. I don't recall exactly. I
24 think I was.

25 Q. Okay. And is Trooper Johnson

1 saying anything to you at this time?

2 A. No, I think we're both just
3 yelling at Troy to quit fighting and
4 I don't recall Steve saying anything
5 to me.

6 Q. Okay. And what happens next?

7 A. Well, I didn't have any real
8 way of grabbing anybody's arms or
9 Troy's arms are underneath their
10 bodies. So I took my Taser out and
11 leaned back as far as I could to get
12 the spread on the probes and fired a
13 Taser into Troy. And while that was
14 activated, Steve was able to slide
15 out from under him and start
16 handcuffing him.

17 Q. Okay. And so Trooper Johnson
18 slides out completely from underneath
19 him?

20 A. Yes.

21 Q. And he handcuffs both the left
22 and the right handcuff?

23 A. Yes.

24 Q. And where are you at this
25 time?

1 A. Still holding the Taser and
2 still kneeling on the buttocks of Mr.
3 Hooftallen holding the Taser.

4 Q. Okay. And then what happens
5 next?

6 A. Well, Trooper Johnson pulled
7 the probes of Troy and I just took
8 the cartridge off of the Taser and I
9 started trying the holster, to
10 reholster the Taser. While I was
11 doing that, I couldn't get it to
12 snap. I didn't put the new cartridge
13 --- the bottom Taser has a second
14 cartridge put in so it wouldn't fit
15 snug and I couldn't snap it on there,
16 but I was trying with one hand and
17 holding onto Troy with the other.
18 And then he started getting real
19 violent, started kicking and
20 thrashing. So then I ended up taking
21 the Taser back out and then do a dry
22 stun.

23 Q. Okay. So where's Trooper
24 Johnson now? He's out from
25 underneath him. Is he standing now?

1 A. Yeah, he's right alongside me.
2 We're both behind Troy and holding
3 onto him.

4 Q. Okay. So you're both behind
5 Troy. Where are Trooper Johnson's
6 hands on Troy at this point, or body?

7 A. I'm not sure if he's holding
8 his arm. I'm not exactly sure where
9 his hands were at that point.

10 Q. Okay. But he's completely
11 handcuffed at this point?

12 A. Yes.

13 Q. Okay. And you still have your
14 knee on --- your knees on his lower
15 back, buttocks area?

16 A. Yeah.

17 Q. And you were not able to fully
18 snap your Taser in your holster?

19 A. Right.

20 Q. And you then administer a dry
21 stun?

22 A. Yeah. I did a dry stun
23 because he was kicking and thrashing
24 very violently. And I did a dry stun
25 on his leg and didn't get any

1 response from him at that point. And
2 I reinitiated and his shirt had
3 pulled up, so I did a dry stun in his
4 back. And he rolled away from me and
5 kind of yelled a little bit at that
6 point. So I think it disengaged and
7 I reengaged it because when he rolled
8 away, it disengaged the Taser. And
9 then at that point I turned it off
10 and reholstered the Taser.

11 Q. Okay. So at this point before
12 you administered that second dry
13 stun, Mr. Hooftallen is face down on
14 the couch. His knees are on the
15 ground or his knees were ---?

16 A. No. I don't think his knees
17 are --- his knees are like off the
18 edge of the couch, off the loveseat
19 there.

20 Q. Okay. And he's facing forward
21 onto the couch?

22 A. Yeah, he's kind of diagonal.
23 His head's up by the left armrest.

24 Q. Okay.

25 A. That area.

1 Q. Can you tell me exactly what
2 he's doing, I mean, with his body? I
3 mean, he is handcuffed from behind.

4 A. He's just kicking and
5 thrashing. I mean, we had to hang
6 onto him to keep him from moving from
7 where he was at. He just was very
8 violent with thrashing, kicking his
9 legs.

10 Q. But he's face down though. So
11 can you explain to me how he's
12 kicking?

13 A. Well, just the whole body's
14 just --- he's bouncing and just
15 kicking and bucking violently.

16 Q. Is he saying anything?

17 A. Not that I recall.

18 Q. Did you ask his mother to say
19 anything to him at this point?

20 A. No.

21 Q. And he doesn't have any
22 weapons on him and he's cuffed from
23 behind. Is the fear that you're
24 going to be kicked?

25 A. Well, yeah. He's still out of

1 control. He's still ---.

2 Q. And what are you trying to
3 accomplish at this point? For him to
4 stop kicking and thrashing?

5 A. Yeah, for him to calm down and
6 ---

7 Q. Okay.

8 A. --- stop, you know, fighting
9 with us.

10 Q. Okay. So I cut you off. You
11 said you administered the dry stun to
12 the right leg?

13 A. Yeah.

14 Q. You don't see any response
15 from him?

16 A. No.

17 Q. Does he scream?

18 A. Nothing. There's no response
19 there at all.

20 Q. Okay. Then you see, you said,
21 his shirt go up?

22 A. Yeah, his shirt lifted up and
23 you could see the bare skin.

24 Q. Okay.

25 A. Or his lower right back.

1 Q. And then what?

2 A. Then I put the --- did a dry
3 stun at that point. And then that's
4 when he yelled, kind of rolled
5 forwards on the couch trying to roll
6 away from the pain obviously.

7 Q. So he rolls which way?

8 A. It would be to his right
9 towards the couch. Toward the back
10 of the loveseat. I mean toward the
11 back of the loveseat, away.

12 Q. Okay. Do you guys step back
13 at all as he's kicking and thrashing?

14 A. No, we're trying to hold him,
15 hold him down.

16 Q. Okay. And what happens after
17 the second dry stun?

18 A. Well, he kind of calmed down a
19 little bit, and I put the Taser away,
20 got it snapped. And then he started
21 kicking with his legs. And I was
22 holding --- I got down and held both
23 legs down up against the couch and
24 kind of pinned him there. And I told
25 Steve I needed to --- I'll get my

1 shackles. I always had a pair of
2 shackles I kept in my patrol bag.
3 And Timmy at this point was standing
4 just to my right, and I said can you
5 help hold his legs? And he jumped
6 down and grabbed onto his legs and
7 then I ran out to the car to bring my
8 shackles in.

9 Q. Okay. So how is Timmy
10 positioned now? Is Timmy just
11 kneeling down?

12 A. Yeah, kneeling or crouched
13 down right there with both hands on
14 his --- on Timmy's legs.

15 Q. Okay.

16 ATTORNEY DONAHOE:

17 On Troy's legs?

18 A. On Troy's legs, sorry. Yeah.

19 BY ATTORNEY CORRADO:

20 Q. And where is Trooper Johnson
21 at this point?

22 A. Still holding his upper body.

23 Q. Okay. And holding him how?

24 A. I think his hands on him. I'm
25 not sure. Like I said, I don't

1 recall how exactly his hands were at
2 that point.

3 Q. Okay. Just his --- you know,
4 the palms of his hands or is he using
5 his arms? Is he using his knees?

6 ATTORNEY DONAHOE:

7 Well, he already said
8 he didn't recall how his hands
9 were on him, but if you want
10 to take another crack at
11 recalling?

12 A. I mean, he's basically sitting
13 like I am and we're crouched down
14 leaning over top of him holding him.
15 I mean, he wasn't laying on him or
16 --- I mean, he's just --- I don't
17 know what part of the body, his
18 shoulder or arms or where he actually
19 has his hands positioned or how
20 they're positioned because I'm
21 worried about watching his legs and
22 not getting kicked.

23 BY ATTORNEY CORRADO:

24 Q. Do you know on what part of
25 Troy --- I mean, do you see him, his

1 hands on any part of Troy at this
2 point? Where on Troy?

3 A. Well, like I say, he's holding
4 the upper body so I'm not sure what
5 exact position his hands are on at
6 that point.

7 Q. Okay, okay. And Troy's still
8 face down on the couch?

9 A. Yeah, he's still diagonal,
10 diagonal across the couch.

11 Q. Okay. So then you leave to go
12 get your shackles?

13 A. Yes.

14 Q. And then what happens?

15 A. I came back in and put one of
16 the shackles on and he was --- he
17 kicked his legs and his legs kicked
18 apart and I had to pull them together
19 to get the other shackle on because
20 he had his legs spread out far enough
21 where I couldn't get the shackle on.
22 Got the second shackles on. And then
23 we rolled him onto the floor on his
24 back.

25 Q. And why did you do that?

1 A. Just to get him off --- to
2 secure him on the floor. I mean,
3 he's diagonal across a couch so, I
4 mean, he's on the floor. He's less
5 of a danger or a threat to kick
6 anybody when he is on the couch.

7 Q. Okay.

8 A. Even with the shackles on,
9 he's still a threat at that point if
10 he's up off the ground.

11 Q. Okay. So when you bring him
12 onto the floor, he's on his back?

13 A. Yes.

14 Q. And he's shackled. Is he
15 saying anything at this point?

16 A. No.

17 Q. How does he look to you?

18 A. He's just laying there at this
19 point.

20 Q. Okay. Is the family member
21 saying anything to you at this point?

22 A. No.

23 Q. Okay. So he does not appear
24 in distress at all at this point to
25 you?

1 A. No.

2 Q. Is he conscious?

3 A. He appeared to be, yeah.

4 Q. Were his eyes open?

5 A. I don't recall for sure
6 whether they were or not.

7 Q. Okay. So you're not sure if
8 his eyes were open or closed at this
9 point?

10 A. I thought they were open. I'm
11 not 100 percent sure on that.

12 Q. Okay. What happens next?

13 A. I went out and called our
14 dispatcher, told him to get the
15 ambulance, paramedics, up to the
16 scene. Then I walked back into the
17 house and Timmy started talking to
18 me. I walked back to where Troy's
19 feet were at because Timmy was
20 standing there at the point where he
21 had stood up from where he was
22 holding him on the couch. And he
23 told me that --- started apologizing
24 for his brother's behavior. He said
25 I'm sorry. And I basically told him,

1 well, I knew it was coming, just the
2 state that he was in. You know, I
3 had my back to Troy at that point.
4 And then Timmy said something about
5 is he still breathing. And I turned
6 around and Trooper Johnson went down
7 and checked his pulse. And we rolled
8 him onto the recovery position on the
9 side.

10 Q. All right. I just want to
11 stop you for a minute there. How
12 long do you think you were gone
13 getting the shackles?

14 A. Probably less than a minute.

15 Q. Okay. When you leave, you
16 said Troy is on his back on the
17 floor. What position is Trooper
18 Johnson?

19 A. No, he was still ---. When I
20 went to get shackles, he was still on
21 the couch.

22 Q. I'm sorry. After the shackles
23 are put on him, he's on the floor on
24 his back?

25 A. Yes.

1 Q. And you go outside to make the
2 call?

3 A. Right.

4 Q. What position is Trooper
5 Johnson in at this time?

6 A. I think he's crouched down by
7 the head.

8 Q. Okay. And where is he holding
9 Mr. Hoof tallen?

10 A. I couldn't say exactly what
11 position he was in right there. He
12 was crouched down over him by his
13 head area, but I'm not sure.

14 Q. Okay. So you're not sure if
15 he had any --- if he was placing any
16 pressure on Mr. Hoof tallen at this
17 time?

18 A. No, I couldn't say for sure.

19 Q. Okay. But he was down by his
20 head area?

21 A. Yeah.

22 Q. Okay. When you come back in
23 from calling the state police, how
24 long were you gone?

25 A. Not very long. I just ---.

1 ATTORNEY DONAHOE:

2 You mean when he called
3 the dispatch ---

4 ATTORNEY CORRADO:

5 Yes.

6 ATTORNEY DONAHOE:

7 --- to tell the EMS to
8 come?

9 ATTORNEY CORRADO:

10 Yes.

11 ATTORNEY DONAHOE:

12 Okay.

13 A. Yeah, not very long. Maybe 30
14 seconds or a minute.

15 BY ATTORNEY CORRADO:

16 Q. Okay. And what exactly did
17 you tell them?

18 A. Just to get the ambulance,
19 tell them to call the ambulance, get
20 them up here.

21 Q. Okay. And when you come back
22 in, is Trooper Johnson still by his
23 head area?

24 A. I believe. I don't recall if
25 he was still crouched down or if he

1 was standing at that point.

2 Q. Okay.

3 A. He was still in that same
4 general vicinity toward Troy's head.

5 Q. Okay. And I'm sorry. Where's
6 Timmy at this time?

7 A. Still down at the --- between
8 the sofa and the couch, the loveseat
9 and the sofa.

10 Q. Okay. And Troy's not saying
11 anything at this point?

12 A. No.

13 Q. Are his eyes closed or open?

14 A. I don't know at this point.

15 Q. Okay. So I'm sorry. Go on.
16 What happens next? You're waiting
17 for the ambulance to arrive.

18 A. Yeah. And I was talking to
19 Timmy. Timmy was apologizing for his
20 brother's behavior.

21 Q. Right.

22 A. Then Timmy says is he still
23 breathing. I turned back and Trooper
24 Johnson went down and checked his
25 pulse and checked his breathing.

1 Then we rolled him onto his side,
2 onto his right side.

3 Q. When he checked his pulse and
4 his breathing, what were the results
5 of that?

6 A. He said he still had a pulse.

7 Q. He still had a pulse?

8 A. Yeah.

9 Q. Did it appear to you that he
10 was in distress?

11 A. Not at that point, it didn't
12 seem like.

13 Q. What led Timmy to believe, if
14 you know, that his brother was no
15 longer breathing?

16 A. I don't know. My back was to
17 Troy. I was facing Timmy, talking to
18 him and then he said that. I don't
19 know what triggered ---.

20 Q. Okay. Did Mr. Hooftallen make
21 any gurgling noises or gasping
22 breaths?

23 A. Not at that point. We rolled
24 him onto his recovery position and I
25 crouched down next to him and then I

1 told Steve, go back out. Go call the
2 ambulance and get it expedited up
3 here. At that point, he was making
4 gasping breaths. It was almost like
5 a sleep apnea-type. He would stop
6 breathing for a second and then he'd
7 take a loud gasp for air, but he
8 continued doing that.

9 Q. Okay. So Timmy says is he
10 breathing. Trooper Johnson checks
11 his pulse, says he has a pulse. Did
12 you see any other signs of distress?
13 Eyes rolling back in the head? Was
14 he turning blue, because you do roll
15 him into a recovery position?

16 A. Yeah. I didn't see --- I
17 don't recall his eyes. Can I refer
18 to my report here a second to see how
19 ---? I don't think I had ---. Yeah,
20 I don't recall anything about the
21 eyes.

22 Q. Okay. So now he's on his
23 side, and then what happens?

24 A. Well, Steve went up to call
25 the ambulance to get them to hurry

1 up. I stayed down by his head and
2 kept him in the side position. And
3 he was doing the gasping breaths. I
4 had asked his mother if there was ---
5 if he had any kind of sleep apnea or
6 any kind of condition like that, and
7 she said that, well, he has trouble
8 breathing when he's taking these
9 pills.

10 Q. Okay. Did you uncuff him?

11 A. No.

12 Q. Why not?

13 A. I don't know his status yet.
14 He's in a recovery position. There's
15 no point at that point. I mean, why
16 unsecure him at that point?

17 Q. Okay. When does he go
18 unconscious?

19 A. The paramedics came in and the
20 first paramedic reached down, felt
21 for his breath, and said he had
22 shallow breathing. And we uncuffed
23 him from the back and moved the
24 handcuffs to the front so that ---.

25 Q. Did they ask you to do that?

1 A. No, I don't think they did. I
2 think we just did it so that he'd be
3 in position where they could work on
4 him, get him on a gurney more
5 comfortably that way. And then when
6 the paramedics got down then he said
7 about he lost his --- no pulse, no
8 breathing and they initiated CPR.

9 Q. Did you observe Troy to be
10 blue at any time?

11 A. No.

12 Q. How was the family reacting at
13 this time?

14 A. I don't think they said
15 anything. They were just all
16 standing kind of watching everything.

17 Q. How many minutes elapsed, if
18 you recall, between the time you
19 placed him in the recovery position
20 until the ambulance arrives?

21 A. Not very long. Probably less
22 than a minute because they were not
23 even a quarter-mile up the road from
24 where they were staging at.

25 Q. And who arrives first? I

1 think there was --- were there two
2 units staged?

3 A. Well, there was paramedics
4 from the medic unit and then there
5 was also --- Big Run Fire Company had
6 sent out a response team also, and
7 they were altogether there. And they
8 all came. The paramedics came in
9 first from the ambulance crew and
10 then the fire company came in, all
11 basically the same time.

12 Q. Okay. And who was the first
13 to, if you recall, treat him on the
14 scene? Do you know these responders?
15 Do you know their names?

16 A. I don't know their names, no.

17 Q. Okay. Can you describe the
18 first responder, the person who was
19 checking his vital signs?

20 A. It was a male probably in his
21 40s, maybe 50s. And a female, I
22 think, with him.

23 Q. Okay. What did you tell the
24 EMS when you --- when they arrived,
25 if anything, or the first responders?

1 A. I don't know if I said
2 anything at that point because it was
3 just ---. I mean, they came in, we
4 changed the handcuffs and rolled him
5 over, and they lost the pulse and
6 breathing so it all went kind of nuts
7 at that point with everybody trying
8 to get CPR started and ---.

9 Q. Did you tell them that he had
10 been tased?

11 A. I don't recall if I did or
12 not.

13 Q. Okay. So what happens next?
14 They administer CPR?

15 A. Yeah, they started CPR and we
16 assist them to get him transported
17 out, get him out on the gurney and
18 then out of the house into the medic
19 unit.

20 Q. Okay. So you moved his cuffs
21 from the front --- from the back to
22 the front prior to the first
23 responders arriving?

24 A. No, when they came in, we
25 switched it over.

1 Q. Okay. And then what happens?
2 What's next?

3 A. They continued CPR, put him in
4 a medic unit and took him to the
5 hospital. And I had called our
6 dispatcher and advised him to have a
7 Punxsy Borough Police meet the
8 ambulance at the emergency room so
9 they could remove the handcuffs for
10 treatment up there.

11 Q. Okay. Where do you go after
12 this?

13 A. We went to the emergency room.

14 Q. And what did you do there?

15 A. Not much there. Just waited
16 as they were working on him for quite
17 a while until they transferred him to
18 --- I don't know where he went to,
19 Pittsburgh.

20 Q. And then just going back to
21 the Taser and the handcuffs, have you
22 ever tased somebody in handcuffs
23 before?

24 A. No.

25 Q. Okay. And have you ever tased

1 anybody before?

2 A. Yes.

3 Q. How many times would you say?

4 A. I know once for sure and I'm
5 not sure if I did anybody else
6 besides that. I tried at somebody
7 and missed, but this was two
8 occasions I recall.

9 Q. So this would be the second
10 time you've tased somebody?

11 A. Yeah, I think it was the
12 second time.

13 Q. Okay. Any department training
14 on how many times somebody should be
15 tased? Do they give you any
16 instructions on, you know, once, more
17 than once?

18 A. It all depends on the
19 circumstances, until the force is
20 overcome and the person's secured.

21 Q. Okay. Did you ever have any
22 training regarding how to deal with
23 somebody on these mental health
24 calls? I mean, are they to be
25 treated differently than a normal

1 call?

2 ATTORNEY DONAHOE:

3 Are you saying is this
4 a mental health call, and is
5 there such a thing because you
6 have to lay a foundation for
7 that question.

8 ATTORNEY CORRADO:

9 Right. I thought he
10 did earlier when he said that
11 he got a call that this was a
12 mental health call.

13 A. I believe I said that, yeah.

14 ATTORNEY DONAHOE:

15 Okay.

16 BY ATTORNEY CORRADO:

17 Q. Is there specific training on
18 how to deal with mental health calls?

19 A. Well, I mean, nothing
20 specific. I mean, your best judgment
21 on a case. I mean, you want to try
22 to keep things as calm as possible
23 and, you know, try to ---. You know,
24 I'm just there as an assistant to the
25 ambulance crew basically at that

1 point, so there's nothing as far as
2 me as the law enforcement just other
3 than keeping everybody safe and try
4 to get the individual the care he
5 needs.

6 Q. Okay. Was there an internal
7 investigation as a result of this
8 case?

9 A. Yes.

10 Q. And tell me about that. You
11 provided an interview? I'm assuming
12 you were interviewed?

13 A. Yes.

14 Q. Okay. And you provided a
15 written statement?

16 A. Yes.

17 Q. Okay. Can you tell me what
18 the results of the internal
19 investigation were?

20 A. There was nothing. Our
21 conduct was proper and there was
22 nothing in violation of any
23 department regulations.

24 ATTORNEY CORRADO:

25 Okay. I think we're

1 going to take --- can we take
2 a quick break and just go
3 through my notes quickly to
4 see if I have any more
5 questions?

6 OFF VIDEO

7 SHORT BREAK TAKEN

8 ON VIDEO

9 BY ATTORNEY CORRADO:

10 Q. Mr. Battestilli, you had
11 mentioned earlier that Timmy said
12 something to you. He apologized, and
13 you responded that you had expected
14 this. What did you mean by that?

15 A. Just as agitated --- I mean,
16 as agitated as he was, he kept saying
17 he wanted to fight, he was going to
18 fight and we couldn't really talk him
19 down out of it. He just wouldn't
20 respond, you know, to my comments to
21 him other than just kept repeating
22 the same thing over and over again.
23 So you're kind of waiting for
24 something like that where they're
25 going to explode at some point, you

1 know, because he wasn't calming down.

2 Q. Did you call for backup at any
3 time?

4 A. No. We're the only car out so
5 there's --- it's me and Steve.
6 That's it.

7 Q. Okay. I just want to go back
8 to about that this was a mental
9 health call. What percentage of
10 calls would you say, if you could
11 give me an estimate, are mental
12 health calls that you respond to over
13 the years or on a yearly basis?

14 A. Oh, I have no idea.

15 Q. Would you say half?

16 A. No.

17 Q. Less than half?

18 A. Not that much, but they're
19 frequent. I mean, you might not do
20 one for a month or two months and you
21 might get one weekend where you get
22 three or four. I mean, it just ---.

23 Q. And what sort of training do
24 they give you at all regarding mental
25 health calls?

1 A. Well, I don't recall anything
2 specific related to that. I mean,
3 we're mostly there just to assist the
4 ambulance service. That's their
5 incident. We're only called if
6 there's a problem or if they feel it
7 could be a violent individual just to
8 help keep them safe.

9 Q. So you did not get any
10 training with the state police. Did
11 you get any training in your prior
12 employment with either the Borough of
13 Punxsutawney or you had mentioned you
14 had been a corrections officer or in
15 the military at all? Any mental
16 health training?

17 A. We had people come in from
18 different agencies talking about
19 mental health, you know, cases and
20 things, but as far as actually
21 dealing with the people there, it's
22 your judgment basically on, you know,
23 try to keep them calm and keep them,
24 you know, --- build a rapport with
25 them, just stuff like that.

1 Q. Okay. And what about medical
2 training? You had mentioned earlier
3 that with the state police, you had
4 been CPR certified. Any training
5 regarding medical training with the
6 Borough of Punxsutawney or as a
7 corrections officer or with the
8 military?

9 A. Well, the military in basic
10 training and also I attended Indiana
11 University of Pennsylvania Police
12 Academy there. And you get basic
13 first-aid as first responder
14 training.

15 Q. Okay. And so when you say
16 first-aid, is that all first
17 responder training includes or is
18 that also the CPR and ---?

19 A. All together. It's the CPR,
20 you know, bleeding wounds, things
21 like that, you know, medical
22 emergencies.

23 Q. Okay. Did you know Mr.
24 Hooftallen had taken --- had anyone
25 told you he had had Crohn's disease?

1 A. No.

2 Q. You were not aware of that at
3 the time of the call?

4 A. No.

5 Q. Okay. And you did not use
6 your baton at all during this
7 incident?

8 A. No.

9 Q. You did not use your pepper
10 spray at all during this incident?

11 A. No.

12 ATTORNEY CORRADO:

13 I don't think I have
14 any further questions. Thank
15 you for your time.

16 A. Sure.

17 EXAMINATION

18 BY ATTORNEY DONAHOE:

19 Q. Trooper, I just want to go
20 over a couple questions to, in my
21 mind, at least clarify one or two
22 items. First of all, when you were
23 dispatched to this residence, had you
24 ever been there before?

25 A. No.

1 Q. Were you dispatched by a
2 Pennsylvania State Police
3 communications officer?

4 A. Yes.

5 Q. Did they receive the call from
6 911 and then dispatch you?

7 A. Yes.

8 Q. Does 911 dispatch the EMS
9 service?

10 A. Yes.

11 Q. All right. Were you aware
12 that EMS was standing by when you
13 went to the scene?

14 A. Yes.

15 Q. All right. You arrived. And
16 would you describe Mr. Hooftallen,
17 Troy, who later died as being at some
18 point combative?

19 A. Yes.

20 Q. In that he was combative, does
21 that demeanor occur only in mental
22 health calls or can you --- can you
23 encounter combative persons when
24 there is no indication that it's a
25 mental health call?

1 A. Well, yes.

2 Q. All right. Have you had some
3 years of experience dealing with
4 mental health calls?

5 A. Yes.

6 Q. All right. Did you try to
7 calm the situation?

8 A. Yes.

9 Q. When you respond to a mental
10 health call, is there generally an
11 understanding that you do not want to
12 antagonize the person who's the
13 subject and you want to develop a
14 rapport with them?

15 A. Yeah, I want them to basically
16 voluntarily go with the ambulance
17 crew for treatment.

18 Q. Did you try to talk to Troy to
19 develop a rapport with him?

20 A. Yes.

21 Q. All right. Did you know while
22 you were on the way to this call that
23 his brother had advised the dispatch
24 that he was not only large, six foot,
25 four, and I think over 200 pounds,

1 and according to his brother, he was
2 an expert in Kung Fu or Tae Kwan Do?
3 Were you aware of that?

4 A. Yes.

5 Q. When he was kicking you, were
6 you able to determine whether or not
7 these were kicks by someone who had
8 been trained as a martial arts
9 expert?

10 A. No.

11 ATTORNEY CORRADO:

12 I don't recall any
13 testimony regarding that he
14 was kicked.

15 ATTORNEY DONAHOE:

16 Oh, kicking actually.

17 BY ATTORNEY CORRADO:

18 Q. I don't know that you were
19 kicked either. Did any of the kicks
20 land on you?

21 A. No. More a thrashing type
22 thing. It wasn't an actual kick.

23 Q. Sorry. I'll withdraw that
24 point. With respect to the Exhibit
25 Battestilli Number One, everybody has

1 a copy so I'm going to give that back
2 to Counsel and work from the copy
3 that I have that's not marked. But
4 it's the same as Battestilli Number
5 One.

6 A. Okay.

7 ATTORNEY CORRADO:

8 Okay.

9 BY ATTORNEY CORRADO:

10 Q. I just don't understand a few
11 of the entries there. This is called
12 a mobile unit log, radio dispatcher
13 log. So is this kept by your PCO
14 officer?

15 A. Yes.

16 Q. All right. And he's an
17 employee of the Pennsylvania State
18 Police?

19 A. Yes.

20 Q. This particular log is
21 particular to your patrol unit;
22 correct?

23 A. Yes.

24 Q. And your unit is ten?

25 A. Right.

1 Q. Who is driving, you or Steve?

2 A. I was.

3 Q. The initial MHR assist has a
4 time of 2322 across from it. It's
5 CO1-1038588?

6 A. Right.

7 Q. The 2322, is that the time
8 that the dispatcher at the state
9 police radioed you to respond to this
10 location?

11 A. Yes.

12 Q. Is the out of service 2337 the
13 time when you arrived at the --- at
14 the residence?

15 A. Yes.

16 Q. The line two lines down has a
17 ditto mark, so they're referencing
18 CO1-1038589, Punxsy Emergency Room.
19 The out of service is 1219 a.m. Is
20 that the time when you and Trooper
21 Johnson arrived at the Punxsy
22 emergency room?

23 A. Yes.

24 Q. Do you know how far of a drive
25 it is from the home where you had

1 encountered Mr. Hooftallen to the
2 Punxsy Emergency Room?

3 A. It would be about seven or
4 eight miles.

5 Q. Okay. And you don't know the
6 time that it took you to drive there?

7 A. No.

8 Q. Okay. Were you advised what
9 drugs Troy ingested that day?

10 A. Just I was told the Mucinex DS
11 or DM, whatever.

12 Q. And you were asked before but
13 I forget your answer. Were you
14 advised whether it was prescription
15 or over-the-counter?

16 A. No.

17 Q. Were you advised whether this
18 was taken to get high?

19 A. That was my understanding.

20 Q. Okay. Any other drugs that he
21 had taken that you were aware of that
22 day?

23 A. No.

24 ATTORNEY DONAHOE:

25 I think that's all I

1 want, the questions I have.

2 Go ahead.

3 ATTORNEY CORRADO:

4 I just have one or two
5 follow-up questions.

6 RE-EXAMINATION

7 BY ATTORNEY CORRADO:

8 Q. Referring back to Exhibit One,
9 ---

10 A. Yes.

11 Q. --- the first line says
12 1038588. You have mentioned that was
13 an incident number?

14 A. Yes.

15 Q. Then below is 589. This is
16 the same incident or ---?

17 A. Yeah. What they would have
18 done on here, the time's kind of odd
19 on this side. The first number would
20 be our initial incident which would
21 be an assignment report only for the
22 mental health assistance.

23 Q. Okay.

24 A. I believe the second number,
25 I'd have to look at the reports,

1 probably the incident he made of the
2 assault. And I told him Trooper
3 Johnson had been assaulted by the
4 subject and he had been tasered. So
5 he would have cut a different number
6 for that, an incident report for the
7 assault on both of us.

8 Q. Okay.

9 A. So that's that number. And
10 then because normally they don't put
11 you in service until the completion
12 of the whole incident so I don't know
13 why he --- the numbers are in the
14 beginning. He'd either leave it
15 blank where he has 207207. It would
16 be just at the end or he'd have a
17 final in-service when you're done
18 with that whole incident. So I mean,
19 it's a little odd that way. I don't
20 know why they have it that way.

21 Q. So do you provide them with
22 these time in and time out of
23 service?

24 A. We call the radio. We tell
25 them we've arrived. They'll put the

1 in-service or he'll do the assigned
2 time when he assigned you the
3 incident. And when we call the radio
4 and say we've arrived at the scene,
5 that will be our first out-of-service
6 time.

7 Q. Right.

8 A. And then when we're finished
9 with the incident, then he'll back
10 the back in service that we're
11 available for a call at that point.

12 Q. But to put in the 2345 and the
13 2346, was that something then that
14 would be put in later? How would he
15 know to put in 2345?

16 A. That was probably when he cut
17 the other number for the assault and
18 put an assigned time for that.

19 Q. And what are these blacked-out
20 numbers, if you know? Is that an
21 address?

22 A. I don't know. I don't know
23 what was in there.

24 Q. And the MHR assist, is that
25 mental health response? Does MHR

1 stand for mental health response?

2 A. The sheet they use to assign
3 stuff is MHR, mental health
4 retardation would be the code.

5 Q. Okay.

6 A. So it's MHR.

7 Q. You had mentioned earlier that
8 you did not bring your radio in
9 because it was just one more thing
10 that you would have to carry. Would
11 you normally bring your radio for a
12 mental health response?

13 A. I don't normally carry my
14 portable radio unless I'm going to go
15 out in the woods or out away from any
16 communications. So I just said I
17 don't like wearing mine on my belt.
18 Some guys have the holster on there
19 you can wear on your belt, but with
20 all the other stuff we have on, it's
21 uncomfortable to wear all night, so I
22 have it in a bag. It's available for
23 me. If I'm going to be away from the
24 car for any distance, then I'll take
25 the portable radio.

1 Q. So you used your personal cell
2 phone in order to call the ambulance?

3 A. Yes. Well, to call our
4 dispatcher, yeah.

5 Q. To call your dispatcher. And
6 why did you exit or did Trooper
7 Johnson exit the home in order to
8 make the call to call for the
9 ambulance? He did not make the call
10 at the scene?

11 A. Yeah, I don't know if he left
12 the scene. I don't recall if I went
13 out just the front. When I made the
14 initial call, I think I went toward
15 the back door. I don't think I went
16 outside, just in the hallway there
17 and told them what was going on. And
18 I don't know where Steve --- if he
19 went out of the house or if he just
20 went back the hallway, too. I'm not
21 sure.

22 Q. Okay. And is that the only
23 way to contact EMS? Could you have
24 used your radio?

25 A. No, we don't have radio

1 communication with the paramedics.

2 Q. Okay. So you would have used
3 your radio to contact ---

4 A. Our dispatcher.

5 Q. --- the dispatcher who would
6 then call ---?

7 A. 911 center and have them send
8 the ambulance.

9 Q. Okay. And why isn't the
10 ambulance at the home?

11 A. They want to keep a safe
12 distance away if they're not sure
13 what's ---. You know, when they get
14 a call like that, the person's
15 threatening violence, they don't know
16 if there's weapons involved or what's
17 the possibility there. So they'll
18 find a location that's safe to get
19 away from the residence until we
20 arrive and secure the scene and we
21 tell them it's safe, that they can
22 bring the ambulance down.

23 Q. Okay. Would you agree that
24 seconds count many times in medical
25 emergencies?

1 ATTORNEY DONAHOE:

2 You know, let me just
3 say that's probably just a
4 doctor question. So you're
5 asking him for an expert
6 opinion about such a general
7 thing?

8 ATTORNEY CORRADO:

9 Although he has
10 testified that he does have
11 medical training.

12 ATTORNEY DONAHOE:

13 But, I mean, seconds
14 count in what? A heart
15 attack, baby dropped out of a
16 car? I mean, what are you
17 talking about? Crushed chest?
18 I mean, every medical
19 emergency presents a different
20 medical profile. So seconds
21 count in a stroke as far as I
22 know, but I'm not a doctor. I
23 don't think he is either.

24 BY ATTORNEY CORRADO:

25 Q. Would it be fair to say that

1 seconds can count in a medical
2 emergency?

3 ATTORNEY DONAHOE:

4 Again, you know, put my
5 objection on the record. You
6 can go ahead and try to answer
7 it.

8 A. Yeah, depending. Most mental
9 health incidents, I've never had one
10 where anybody had any serious
11 complications. We called the
12 ambulance. They're usually there
13 within a minute or two because
14 they're close enough in their staging
15 area.

16 BY ATTORNEY CORRADO:

17 Q. Okay. But you do know that
18 Timmy Hoof tallen did call for medical
19 emergency?

20 A. Yes.

21 ATTORNEY CORRADO:

22 Okay. I think that's
23 all the questions we have.
24 Thank you so much.

25 ATTORNEY DONAHOE:

1 That's all I have.

2 Thanks, Trooper.

3 VIDEOGRAPHER:

4 This deposition has
5 concluded.

6 OFF VIDEO

7 ATTORNEY DONAHOE:

8 Generally speaking, the
9 court reporter will tell you
10 that the transcript will be
11 prepared, and I will send you
12 a copy. You can take a look
13 at it to see if there are any
14 typos. If we don't send you
15 anything back in 30 days, it's
16 finalized; correct?

17 OFF RECORD DISCUSSION

18 ATTORNEY DONAHOE:

19 We won't waive.

20 * * * * *

21 VIDEOTAPED DEPOSITION CONCLUDED

22 AT 11:09 A.M.

23 * * * * *

24

25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CLEARFIELD)

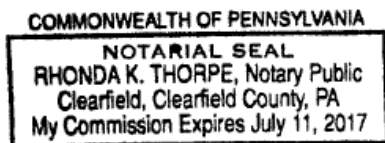
3
4 CERTIFICATE

5 I, Rhonda K. Thorpe, a Notary Public
6 in and for the Commonwealth of Pennsylvania, do
7 hereby certify:

8 That the witness whose testimony
9 appears in the foregoing deposition, was duly
10 sworn by me on said date and that the
11 transcribed deposition of said witness is a
12 true record of the testimony given by said
13 witness;

14 That the proceeding is herein recorded
15 fully and accurately;

16 That I am neither attorney nor counsel
17 for, nor related to any of the parties to the
18 action in which these depositions were taken,
19 and further that I am not a relative of any
20 attorney or counsel employed by the parties
21 hereto, or financially interested in this
22 action.



Rhonda K. Thorpe
Court Reporter

EXHIBIT D-6

Transcript of 911 Call from Timothy Hooftallen to Franklin 911

PENNSYLVANIA STATE POLICE
TRANSCRIPTION

INCIDENT NO.: C01-1038589 Tim Hooftallen
TRANSCRIBED BY: A. Susan Buchheit (Clerk Typist 3)
PROOFED BY: Ruth A. Defelice TAM

DATE OF INTERVIEW: 12/03/10
PAGE 1 OF 6

LEGEND:

TH Tim Hooftallen
D2 Second 911 Dispatcher
D1 First 911 Dispatcher

D1 911 what's your emergency?
TH Yeah, I need a ambulance or someone from the cops to come up here and pick up my brother. He's going crazy.
D1 Where is this at?
TH Uh, 421 Seitz Lane Punxsutawney,
D1 421 what lane?
TH Uh, Seitz, uh, it's Charles Seitz' farm
D1 S i g h t s?
TH S i e r S i e r S e i t z (someone talking in the background) What address is this then?
D1 What's your name?
TH (someone in background "27 Charlie Hill Lane") 27 Charlie Hill Lane is the address.
D1 27 Charlie Hill Lane?
TH Yep
D1 Ok and what's, uh, 421 Seitz Lane? What's that?
TH That's the address that we're at? It's a, it's like
D1 That's the address where you're at?
TH Yeah, where he's at.
D1 That's where he's at?
TH Yep, uh, and me, yeah
D1 Ok, and you're calling from 27 Charlie Hill Lane?
TH Yep
D1 And he's at the 427 Seitz. What's your name?
TH Right, Tim
D1 Last name Tim?

ATTACHMENT: 2
PAGE 25 OF 59

PENNSYLVANIA STATE POLICE TRANSCRIPTION

INCIDENT NO.: C01-1038589 Tim Hooftallen
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DATE OF INTERVIEW: 12/03/10
PAGE 2 OF 6

TH Hooftallen
D1 Can you tell that, spell that?
TH H o o f t a l l e n and he's gonna be violent.
D1 Is he acting violent right now?
TH Yea
D1 How old is he?
TH Uh, 36
D1 36?
TH (someone talking in background "Alright, nobody wants them.")
D1 Ok, what township's that in? Do you know?
TH Um, Punxsutawney, er, uh, e, Gaskill.
D1 It's in
TH It's on Route 36,
D Ok. And he's having just some psychological issues today?
TH Oh yeah! Big time!
D1 Ok, stay online with my partner, he's gonna ask you a few more questions for you. Ok?
TH Are they on their way?
D2 Yeah, uh, yeah we're gonna send the police, we're gonna send, uh, an ambulance
standby till the State Police get there. Ok, sir?
TH Yep
D2 Ok, uh, does he have any weapons?
TH He tried, uh, to kill himself about a month and a half ago.
D2 Ok, right now does he have any weapons with him? Are there any weapons in the
house?
TH No, no weapons.
D Ok, uh, and you're not there at this time?
TH Yeah, I'm right here. I'm in the kitchen; he's in the living room.
D2 Ok, so what address are you at right now?
TH Uh, 23 Charlie Hill Lane

ATTACHMENT: 2
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PENNSYLVANIA STATE POLICE
TRANSCRIPTION

INCIDENT NO.: C01-1038589 Tim Hooftallen
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DATE OF INTERVIEW: 12/03/10
PAGE 3 OF 6

D2 Ok, so
TH Er 27, 27 Charlie Hill Lane
D2 Ok, so you're all at 27 Charlie Hill Lane?
TH Yep.
D2 (Luke, they're all at 27 Charlie Hill Lane.) Ok, what's the 427 Seitz Street then (someone in background saying Seitz Lane) Seitz Lane?
TH That's, that's the, that's where all the post, mail boxes are.
D2 Ok, but he's at, he's with you right now at 23 Charlie Hill Lane?
TH Yea
D2 Ok, he's, he's at that Charlie Hill Lane address.
TH Yes
D2 Ok, sir, now, where's he at right now? (someone at 911 center in background - "Gaskill Township")
TH On the couch.
D2 Ok, uh, ok, he is just being violent or is he threatening to hurt himself or anybody else?
TH Uh, he doesn't plan on goin anywhere.
D2 Ok, but is, has he threatened any to hurt anybody?
TH Nnn, well, he hasn't threatened anybody.
D2 Ok, has he, uh, threatened to hurt himself?
TH Yea, he's, he's taken, has taken somethin. (sounds like might be crying)
D2 Ok, he's, he has taken somethin?
TH Yea, some pills (sound of someone talking in background)
D2 Ok, so he is actively trying to kill himself?
TH Well, he's not trying to kill himself he's just (someone yelling in background) trying to get high and
D2 Yeah, a
TH gets all messed up.
D2 Ok
TH Can you hear him?

ATTACHMENT: 2
PAGE 27 OF 54

PENNSYLVANIA STATE POLICE
TRANSCRIPTION

INCIDENT NO.: C01-1038589 Tim Hooftallen
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DATE OF INTERVIEW: 12/03/10
PAGE 4 OF 6

D2 Yeah, I, I can hear him

(sound of someone hollering in background).

D2 Uh, do you think this is an overdose?

TH Um, it could be. I don't know how much he took.

D2 Ok, sir. Alrighty, uh,

(more loud talking in background "it's coming down")

D2 ok, is he completely alert and awake?

TH Yeah

D2 Ok.

TH He's poundin his fist right now. (A women's voice saying "Enough!")

D2 Ok

TH He's ready to fight.

D2 Ok, sir. Is he breathing normally?

TH You gotta get someone here quick!

D2 Ok, can, can you get everybody out of the house if you have to?

(Loud talking in background. "The kids are trying to sleep.")

TH Well, the kids are sleepin.

D2 Well, I, I understand that sir, but we don't want him hurtin anybody especially the kids.
Ok?

TH He aint gonna hurt the kids, he's, he's just, he's just beatin up on himself.

D2 Ok. Alright sir, uh

TH And I, I can't get him out of the house, I already tried.

D2 Ok, sir, my partner is sending the help, like I said, they're gonna be sending the State
Police. The ambulance will be staging until the State Police can take care of him.

TH Yea

D2 And subdue him or do whatever they need to do to get him to calm down. So the
ambulance will be standing by, uh, just up the street. Uh, keep an eye on him.

TH Ok

ATTACHMENT: 2
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PENNSYLVANIA STATE POLICE
TRANSCRIPTION

INCIDENT NO.: C01-1038589 Tim Hooftallen
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DATE OF INTERVIEW: 12/03/10
PAGE 5 OF 6

D2 Ok, like I say, I mean, just, just watch him I've, you don't have to get physical with him unless you have to defend yourself or anything like that. Ok?

(Person making loud roar like noises in the background)

TH Right

D2 Ok, uh, do you want me to hang up or do you want to stay on the line?

TH Um, it don't matter. (Someone in the background saying "Ma, leave that on!")

D2 ??

TH (Someone in background asking "Who are you on the phone with?) If, if you want tell, tell whoever's comin that the, I have the headlights on, on my jeep,

D2 Ok

TH the porch lights on.

D2 Ok

TH And (Someone asking in background "Who are you talking to?") – (TH - ??? I'm on, I'm, I'm on the phone with my ???.) (Person in background "Who are you, who are you on the phone with?")

D2 Ok, alright, we do have, we do have the State Police in route at this time. Ok?

TH Ok

D2 Ok, do you want to stay on the line? Do you want me to stay on the line or do you, do you feel comfortable?

TH Yeah, just in case, just in case something happens, yeah.

D2 Ok, sir. Ok, how, how big is this guy?

TH Uh, he's, uh 6'4" and he can,

D2 He's 6'4"?

TH yeah, he can fight. He went to, uh, karate and kung fu and all that shit, so. So, uh,

D2 Ok, your address, just to verify it one more time – it's 27 Charlie Hill Lane

TH Yeah

D2 Yeah, 27, ok, sir

TH But, I'm at, I'm at house, uh, it seems like a apartment complex

D2 Um hum

ATTACHMENT: 2
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PENNSYLVANIA STATE POLICE
TRANSCRIPTION

INCIDENT NO.: C01-1038589 Tim Hooftallen
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DATE OF INTERVIEW: 12/03/10
PAGE 6 OF 6

TH I mean there's like a whole bunch of, uh, he, he rents out to us. There's a whole bunch of houses on this property, it's like a farm house.

D2 Ok, but your jeep's sitting out in front of the house they need to report to right?

TH Yep, my jeep's sittin out front of the house,

D2 Right

TH um, my headlights are on, uh, they ride up, uh, 36, Route 36, um, I'm standin right in front of my jeep, and they'll be able to see me.

(Someone from 911 center "27 Charlie Hill Lane")

TH But, uh, and just so you know, that, heee, thhhh, to let them know that he is a, he is one hell of a fuckin scrapper and

D2 Ok

TH he doesn't plan on goin anywhere.

D2 Ok, sir, alright

TH But he has, there's no weapons or anything.

D2 Ok, sir. Alrighty, uh, I'm gonna go ahead and disconnect, uh, you can call 911 back, ok if, if anything should change, you call us back here at 911 ok? And that way we can let the State Police know.

TH Ok

D2 Alrighty

TH Alright, thank you.

D2 Ok

TH Bye

D2 Bye, bye

ATTACHMENT: 2
PAGE 30 OF 54

EXHIBIT D-7

Toxicology Report for Troy Hooftallen

KARL E. WILLIAMS, M.D., M.P.H., MEDICAL EXAMINER
ALLEGHENY COUNTY OFFICE OF THE MEDICAL EXAMINER
FORENSIC LABORATORY DIVISION

1-28-11

TOXICOLOGY SECTION REPORT

Laboratory Case No 10LAB09753 Report # 1

Pathology Case No: 10COR06862

Date: January 27, 2011

Deceased Name: Troy Hooftallen**Autopsy Prosector: Todd Luckasevic****Blood Drawn By: J. Pietrzak****Date of Autopsy 10/21/2010****Specimen(s) Submitted:****By: M. GLOWACKI****Received By: Erin Mullen****Date Submitted: 10/21/2010****Time: 8:55 am**

<u>Item</u>	<u>Qty</u>	<u>Type and Packaging</u>	<u>Notes</u>
4	1	0-10 mL Yellow top tube evidence classified as CORE Urine	12 mL
5	1	0-10 mL Lavender top tube evidence classified as CORE Blood	6 mL
6	1	0-10 mL Lavender top tube evidence classified as CORE Blood	6 mL
7	1	0-10 mL Red top tube evidence classified as CORE Blood	10 mL
8	1	0-10 mL Red top tube evidence classified as CORE Blood	9 mL
9	1	0-10 mL Gray top tube evidence classified as CORE Blood	6 mL
10	1	0-10 mL Gray top tube evidence classified as CORE Blood	6 mL
15	1	0-10 mL Gray top tube evidence classified as CORE Blood	6 mL

By: Jacob Pietrzak**Received By: Lona A. Daley****Date Submitted: 10/21/2010****Time: 2:24 pm**

<u>Item</u>	<u>Qty</u>	<u>Type and Packaging</u>	<u>Notes</u>
24	1	0-10 mL Green with yellow ring tube evidence classified as Hospital Blood	2 mL; 10/19/2010; 0400
28	1	0-10 mL Blue top tube evidence classified as Hospital Blood	2 mL; 10/19/2010; 0400
30	1	0-10 mL Gray top tube evidence classified as Hospital Blood	2 mL; 10/19/2010; 0400
31	1	0-10 mL Lavender top tube evidence classified as Hospital Blood	2 mL; 10/19/2010; 0400
33	1	0-10 mL Plastic tube evidence classified as Hospital Urine	3 mL; 10/19/2010; 0417

By: Curtis Williams**Received By: Erin Mullen****Date Submitted: 10/25/2010****Time: 12:52 pm**

<u>Item</u>	<u>Qty</u>	<u>Type and Packaging</u>	<u>Notes</u>
38	1	0-10 mL Lavender top tube evidence classified as Hospital Blood	3 mL; 10/19/2010; 0400

Laboratory Findings:**4 - CORE Urine****GC Headspace**

Alcohol

Not Detected

GC/MS

Dextromethorphan

POS

5 - CORE Blood**GC Headspace**

Whole Blood Alcohol

Not Detected

BOYLELIT000273

KARL E. WILLIAMS, M.D., M.P.H., MEDICAL EXAMINER
ALLEGHENY COUNTY OFFICE OF THE MEDICAL EXAMINER
FORENSIC LABORATORY DIVISION

TOXICOLOGY SECTION REPORT

Laboratory Case No 10LAB09753 Report # 1

Pathology Case No: 10COR06862

Date: January 27, 2011

Deceased Name: Troy Hooftallen

Autopsy Prosector: Todd Luckasevic

Blood Drawn By: J. Pietrzak

Date of Autopsy 10/21/2010

5 - CORE Blood

ELISA

Benzodiazepines	Not Detected
Cocaine metabolite	Not Detected
Opiates	Not Detected
Oxycodone	Not Detected
Fentanyl	Not Detected

6 - CORE Blood

GC/MS

Dextromethorphan	POS
------------------	-----

7 - CORE Blood

Colorimetry

Salicylates	Not Detected
-------------	--------------

9 - CORE Blood

GC

Dextromethorphan	211 ng/mL
------------------	-----------

10 - CORE Blood

HPLC

Sertraline	Not Detected
Norsertaline	Not Detected

15 - CORE Blood

GC

Dextromethorphan	POS
Methamphetamine	Not Detected
Amphetamine	Not Detected

24 - Hospital Blood

ELISA

Benzodiazepines	Not Detected
Cocaine metabolite	Not Detected
Opiates	Not Detected
Oxycodone	Not Detected
Fentanyl	Not Detected

BOYLELIT000274

KARL E. WILLIAMS, M.D., M.P.H., MEDICAL EXAMINER
ALLEGHENY COUNTY OFFICE OF THE MEDICAL EXAMINER
FORENSIC LABORATORY DIVISION

TOXICOLOGY SECTION REPORT

Laboratory Case No 10LAB09753 Report # 1

Pathology Case No: 10COR06862

Date: January 27, 2011

Deceased Name: Troy Hooftallen

Autopsy Prosecutor: Todd Luckasevic

Blood Drawn By: J. Pietrzak

Date of Autopsy 10/21/2010

28 - Hospital Blood

GC Headspace

Whole Blood Alcohol

Not Detected

HPLC

Sertraline

Not Detected

Norsertaline

Not Detected

30 - Hospital Blood

GC

Dextromethorphan

849 ng/mL

31 - Hospital Blood

GC

Dextromethorphan

POS

Methamphetamine

Not Detected

Amphetamine

Not Detected

33 - Hospital Urine

GC Headspace

Alcohol

Not Detected

ELISA

Barbiturates

Not Detected

Methadone

Not Detected

Propoxyphene

Not Detected

Methamphetamine

Not Detected

Amphetamine

Not Detected

Carisoprodol

Not Detected

GC

Dextromethorphan

POS

Methamphetamine

Not Detected

Amphetamine

Not Detected

GC/MS

Dextromethorphan

POS

38 - Hospital Blood

BOYLELIT000275

KARL E. WILLIAMS, M.D., M.P.H., MEDICAL EXAMINER
ALLEGHENY COUNTY OFFICE OF THE MEDICAL EXAMINER
FORENSIC LABORATORY DIVISION

TOXICOLOGY SECTION REPORT

Laboratory Case No 10LAB09753 Report # 1

Pathology Case No: 10COR06862

Date: January 27, 2011

Deceased Name: Troy Hooftallen

Autopsy Prosector: Todd Luckasevic

Blood Drawn By: J. Pietrzak

Date of Autopsy 10/21/2010

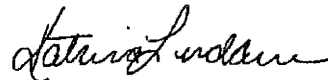
38 - Hospital Blood

ELISA

Benzodiazepines	Not Detected
Cocaine metabolite	Not Detected
Opiates	Not Detected
Oxycodone	Not Detected
Fentanyl	Not Detected
Barbiturates	Not Detected
Methadone	Not Detected
Propoxyphene	Not Detected
Methamphetamine	Not Detected
Amphetamine	* See comment below
Carisoprodol	Not Detected

* Result indicates that further testing is required. Refer to quantitation above for final result.

GC/MS screen may reveal presence of drugs not reported. Only those results confirmed and/or quantified are reported.



Katrina M. Lindauer

Scientist

KARL E. WILLIAMS, M.D., M.P.H., MEDICAL EXAMINER
ALLEGHENY COUNTY OFFICE OF THE MEDICAL EXAMINER
FORENSIC LABORATORY DIVISION

2.14-11

Laboratory Case No: 10LAB09753 Report # 2

Pathology Case No: 10COR06862

Date: February 14, 2011

Deceased Name: Troy Hooftallen**Autopsy Prosector: Todd Luckasevic****Blood Drawn By: J. Pietrzak****Date of Autopsy: 10/21/2010****Specimen(s) Submitted****By: Jacob Pietrzak****Date Submitted: 10/21/2010****Item Qty Type and Packaging**

24	1	0-10 mL Green with ye Hospital Blood
25	1	0-10 mL Green with yel Hospital Blood
26	1	0-10 mL Green with yel Hospital Blood
27	1	0-10 mL Green with yell Hospital Blood
28	1	0-10 mL Blue top tube e
29	1	0-10 mL Lavender top tu Blood
30	1	0-10 mL Gray top tube e
31	1	0-10 mL Lavender top tu Blood
32	1	0-10 mL Blue top tube evidence classified as Hospital Blood
33	1	0-10 mL Plastic tube evidence classified as Hospital Urine
34	1	0-10 mL Plastic tube evidence classified as Hospital Urine

Double Duty
Avapro
 (irbesartan) 150mg - 300mg
Robo Feeding
therapeutic Dextro
1.8 ng/ml
1.8 ng/ml
tox: 500 - 1200
lethal: 3300 - 9200
As soon as pregnancy is detected, discontinue AVAPRO. Please see Indications and Important Safety Information on cube and accompanying full Prescribing Information, including boxed WARNING regarding Use in Pregnancy.
82-P0068 4/06 USA/PR 06.01.20

A. Daley

es

L; 10/19/2010; 0400

; 10/19/2010; 1145

; 10/19/2010; 1010

; 10/19/2010; 0400

; 10/19/2010; 0400

; 10/19/2010; 1010

10/19/2010; 0400

2 mL; 10/19/2010; 0400

4 mL; 10/19/2010; 1345

3 mL; 10/19/2010; 0417

6 mL; 10/19/2010; 0815

By: Brittany Harmon**Received By: Lona A. Daley****Date Submitted: 10/22/2010****Time: 8:25 am****Item Qty Type and Packaging**

36	1	0-10 mL Green top tube evidence classified as Hospital Blood
37	1	0-10 mL Green top tube evidence classified as Hospital Blood

Notes

2 mL; 10/19/2010; no time

2 mL; 10/19/2010; no time

By: Curtis Williams**Received By: Erin Mullen****Date Submitted: 10/25/2010****Time: 12:52 pm****Item Qty Type and Packaging**

38	1	0-10 mL Lavender top tube evidence classified as Hospital Blood
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Notes

3 mL; 10/19/2010; 0400

Laboratory Findings:**38 - Hospital Blood**

Guaifenesin

* Refer to report from NMS

KARL E. WILLIAMS, M.D., M.P.H., MEDICAL EXAMINER
ALLEGHENY COUNTY OFFICE OF THE MEDICAL EXAMINER
FORENSIC LABORATORY DIVISION

Laboratory Case No: 10LAB09753 Report # 2 Pathology Case No: 10COR06862 Date: February 14, 2011

Deceased Name: Troy Hooftallen

Autopsy Prosector: Todd Luckasevic Blood Drawn By: J. Pietrzak Date of Autopsy: 10/21/2010



Jennifer K. Janssen

Assistant Chief Toxicologist

**NMS Labs****CONFIDENTIAL**

3701 Welsh Road, PO Box 433A, Willow Grove, PA 19090-0437

Phone: (215) 657-4900 Fax: (215) 657-2972

e-mail: nms@nmslabs.com

Robert A. Middleberg, PhD, DABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 02/07/2011 23:01

To: 10020

Allegheny Coroner's Forensic Division Labs.
 Attn: Robert Huston
 1520 Penn Ave
 Pittsburgh, PA 15222

Patient Name HOOFTALLEN, TROY

Patient ID 10LAB09753

Chain 11258642

Age Not Given

Gender Male

Workorder 11030662

Page 1 of 2

Positive Findings:

<u>Compound</u>	<u>Result</u>	<u>Units</u>	<u>Matrix Source</u>
Guaifenesin	12	mcg/mL	Hospital Blood

See Detailed Findings section for additional information

Testing Requested:

<u>Analysis Code</u>	<u>Description</u>
2185B	Guaifenesin, Blood

Specimens Received:

<u>ID</u>	<u>Tube/Container</u>	<u>Volume/ Mass</u>	<u>Collection Date/Time</u>	<u>Matrix Source</u>	<u>Miscellaneous Information</u>
001	Lavender Vial	2.2 mL	Not Given	Hospital Blood	

All sample volumes/weights are approximations.

Specimens received on 02/05/2011.

v.7

BOYLELIT000279



CONFIDENTIAL

Workorder 11030662
 Chain 11258642
 Patient ID 10LAB09753

Page 2 of 2

Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Guaifenesin	12	mcg/mL	0.40	001 - Hospital Blood	HPLC

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. Guaifenesin (Glyceryl Guaiacolate) - Hospital Blood:

Guaifenesin is extensively used as an expectorant and is available in numerous over-the-counter medications. It is usually in combination with decongestants, antihistamines and antitussives. Guaifenesin is also a metabolite of Methocarbamol, a skeletal muscle relaxant.

Following a single 600 mg oral dose, peak blood concentrations averaged 1.4 mcg/mL at 15 minutes post-dose. The half-life of guaifenesin in blood is 60 minutes.

Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded six (6) weeks from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Analysis Summary and Reporting Limits:

Acode 2185B - Guaifenesin, Blood - Hospital Blood

-Analysis by High Performance Liquid Chromatography (HPLC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Guaifenesin	0.40 mcg/mL		

v.7

BOYLELIT000280

EXHIBIT D-8

Jefferson County 911 Incident Report

Report Date: 10/25/2010 10:16:45

Report Period
YTD

JEFFERSON COUNTY, PA - 9-1-1

Incident Report

For Incident Number 1010000697

<u>Incident#</u>	<u>Incident Type</u>	<u>Disp Type</u>	<u>Date & Time of Call</u>	<u>Queue Date & Time</u>	<u>Complete Date & Time</u>	<u>Originating Dispatcher</u>	<u>Completing</u>
1010000697	Psychiatric Emergency BLS	3000	10/18/2010 23:19:50	10/18/2010 23:20:01	10/19/2010 01:14:25	LMCCRACKEN	LMCCRACKEN

<u>ESN</u>	<u>EMS Box</u>	<u>Beat</u>	<u>Box</u>	<u>Priority</u>	<u>Call Origination</u>	<u>Originating Incident #</u>	<u>Ending Disposition</u>	<u>Originating CAD ID</u>	<u>Completing CAD ID</u>
50	20	50	1705	0	911 Call	1010000697	Call Complete	0	2

Reporting Party				Incident Location			
First Name	Last Name	Phone Number	DOB	Cross Left	Cross Right	Latitude	Longitude
TIM	HOOFTALLEN	814-249-1287	1/1/9999			-78.878723144531	40.9249458312988
Location	Community	ST		Location		Community	ST
	PA			27	CHARLEY HILL LN	GASKILL	PA

Reporting Party Notes

=====Required Agency=====
X PSP Punxsutawney
=====Required Agency=====
X PSP Punxsutawney
=====Required Agency=====
X PSP Punxsutawney

TDD Info

Comments

36 Y/O MALE PT LMCCRACKEN 10/18/2010 23:26:52
CALLER ADVISED PT WILL BECOME COMBATIVE LMCCRACKEN 10/18/2010 23:27:04
CALLED PSP PUNXSY PCO MCGEE GAVE HIM THE INFO AND LOCATION AND CALLER INFO HE ADVISED HE WILL CALL HIM AND ASK IF WE WERE GOING TO DISCONNECT WITH THE CALLER AND THEN HUNG UP BEFORE I COULD GET AN ETA LMCCRACKEN 10/18/2010 23:31:38
Comments added by: TVERNE terminal: 3
EMD 25-A--1 NON-SUICIDAL AND ALERT DID TAKE PILLS UNK. HOW MANY IS BEING VIOLENT TO HIMSELF. WILL FIGHT WITH PERSONAL WHO SHOWS UP, HAS MARSHALL ART TRAINING. 10-18-2010 23:31:49
RESCUE PUMPER 17 IS AT THE STAGGING POINT LMCCRACKEN 10/18/2010 23:37:56

CALLED PSP PUNXSY SPOKE TO PCO MCGEE ADVISED HIM OF THE ABOVE INFO. TVERNE 10-18-2010 23:40:37
MEDIC 53 IS AT STAGGING LMCCRACKEN 10/18/2010 23:41:56
PER PCO MCGEE SEND EMS IN LMCCRACKEN 10/18/2010 23:52:47
PSP PUNXSY CALLED ADVISED PT. MAY HAVE STOPPED BREATHING TVERNE 10-18-2010 23:54:42

Unit name	Incident#	Report No.	Date/Time	Status	Start Mi	End Mi	Term ID	User ID	Comments
Station17	1010000697		10/18/2010 23:23:59	DS			2	LMCCRACKEN	
Amb50	1010000697		10/18/2010 23:23:59	DS			2	LMCCRACKEN	
PSPPunxsy4	1010000697		10/18/2010 23:24:00	DS			2	LMCCRACKEN	
Amb50	1010000697		10/18/2010 23:25:44	EK			2	LMCCRACKEN	
Dep17	1010000697		10/18/2010 23:28:32	DS			2	LMCCRACKEN	

2
ATTACHMENT 1
PAGE 24 OF 54

Report Date: 10/25/2010 10:16:45

Report Period
YTD

JEFFERSON COUNTY, PA - 9-1-1

Incident Report

For Incident Number 1010000697

Dep17	1010000697	10/18/2010 23:28:34	ER	2	LMCCRACKEN
Station17	1010000697	10/18/2010 23:28:35	EK	2	LMCCRACKEN
PSP Punxsy4	1010000697	10/18/2010 23:28:37	EK	2	LMCCRACKEN
Medic53	1010000697	10/18/2010 23:29:36	DS	2	LMCCRACKEN
Medic53	1010000697	10/18/2010 23:29:38	ER	2	LMCCRACKEN
Amb50	1010000697	10/18/2010 23:29:39	AV	2	LMCCRACKEN
ResPump17	1010000697	10/18/2010 23:30:17	DS	2	LMCCRACKEN
ResPump17	1010000697	10/18/2010 23:30:18	ER	2	LMCCRACKEN
Station17	1010000697	10/18/2010 23:30:20	AV	2	LMCCRACKEN
ResPump17	1010000697	10/18/2010 23:38:21	AC	2	LMCCRACKEN
ResPump17	1010000697	10/18/2010 23:38:23	AC	3	TVERNE
ResPump17	1010000697	10/18/2010 23:38:32	DS	2	LMCCRACKEN
ResPump17	1010000697	10/18/2010 23:38:33	ER	2	LMCCRACKEN
Medic53	1010000697	10/18/2010 23:53:18	OS	2	LMCCRACKEN
ResPump17	1010000697	10/19/2010 00:10:33	AV	2	LMCCRACKEN
Dep17	1010000697	10/19/2010 00:10:34	AV	2	LMCCRACKEN
Medic53	1010000697	10/19/2010 00:13:27	EH	2	LMCCRACKEN
PSP Punxsy4	1010000697	10/19/2010 01:14:25	AV	2	LMCCRACKEN
Medic53	1010000697	10/19/2010 01:14:26	AV	2	LMCCRACKEN

2
ATTACHMENT:
PAGE 22 OF 34